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HAND-BOOK  
OF  
MARINE INSURANCE  
AND  
AVERAGE.

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BY FRANCIS B. DIXON,  
*Counsellor-at-Law,*

AUTHOR OF  
"AN ABRIDGMENT OF THE MARITIME LAW," ALSO, OF "THE LAW OF  
SHIPPING, AND MERCHANTS' AND SHIP MASTERS' GUIDE.

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SECOND EDITION.

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NEW YORK;  
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1866.

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## P R E F A C E.

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The many and various marine disasters which have taken place within the past few years, have led Merchants and Underwriters to inquire more closely into the competency of the Ship-master.

Certain attainments are absolutely necessary to every master. He must, for instance, have a competent knowledge of navigation. Know the construction of his vessel sufficiently to enable him to superintend repairs to hull, spars or rigging. Be able, when required, to direct the construction of jury-masts, the making and hanging of a temporary rudder, &c. He must also be a disciplinarian, both over his own temper and appetite, and over the men who are under his command. And during the whole voyage, he must conduct himself not only under ordinary circumstances, but in all exigencies and emergencies, with due discretion, skill, and complete fidelity to his duties.

In addition to these qualifications, it is also necessary, that the master should, to some extent at least, be familiar with the requirements of commercial law and usage. A great and responsible duty rests upon him, and much depends on his judgment and determination. In case of necessity, or of unexpected and pressing calamity happening in the course of the voyage, the master is by law created an agent from necessity, for the benefit of all concerned; and what he fairly does, under such circumstances, in the exercise of a sound discretion, generally binds all the parties in interest in the voyage, whether owners, or shippers, or underwriters.

The judgment of the master, therefore, has to be exerted for all the interests associated in the adventure which he is conducting. He is not to sacrifice one person or class for another; neither must he fail to protect the underwriters' interests and rights.

However honest the intention of the master may be, and however great his desire to do right, he is invested with such large discretionary powers, and so much depends on his judgment, that a wrong step is

easily taken. If the master, therefore, were better acquainted with the requirements of mercantile law than he now is, and in case of emergency better able to exercise and rely on his own judgment, without the dictation of consignees, surveyors or others, who are not always disinterested in what they recommend; it must be apparent to every one, that shippers would have less apprehension for the safety of their goods; and the underwriters who are continually called upon to pay exorbitant charges and unnecessary expense, would have reason to feel relieved from great anxiety.

So many and great, indeed, have been the losses and expenses to the underwriters, owing to the ignorance of the master, that in nearly all the considerable sea-ports in the world, they have appointed merchants of experience as their agents, with instructions to offer immediate assistance, and such advice as may be required by ship-masters who may be so unfortunate as to meet with disaster. But notwithstanding these agents are men of well known respectability, and stand high in the estimation of underwriters and merchants at home, the master, from some cause or other, probably under the impression that their advice would be prejudiced in favor of the underwriters, has in too many instances, felt reluctant to call upon them; and neglect in doing so, has frequently proved ruinous not only to the underwriters, but also to shippers and owners. A suspicion too has been cast upon the fairness of his transactions, which it has often been found exceedingly difficult to remove.

The maritime law has assigned the powers, defined the rights, and prescribed the duties of the master, but no work has been published designed primarily to instruct and protect him in the fair discharge of his difficult and often critically responsible duties in great emergencies. Elaborate works have been written on the subject by distinguished men who have made commercial law the subject of extended and profound examination, as *Duer*, *Phillips*, *Arnould*, *Parsons*, and others, but these works are too voluminous, costly, and theoretical in their design to render them really useful to the ship master, who has seldom the inclination or the time for the laborious study of learned writings.

To supply, therefore, what has seemed to me an existing want, viz., a hand-book of practical utility and ready reference for the merchant and ship master, has been the first object aimed at in the preparation of this work. To do this, I have found it necessary to dispense as far as possible, with technical phraseology; and by departing somewhat from the usual form of plan and arrangement, have endeavored to render the law in a simple and methodical manner. This of itself has been a difficult task

For the benefit of the master, who frequently finds himself unable to procure the advice he needs, this work, I repeat, has been mainly prepared. But, it is not to be denied, that *Merchants*, and Business men generally, possess much less information on the subject of *Marine Insurance and Average*, than is required from its importance to their interests. By many, the great and only end of insurance is considered to be *complete indemnity*; hence, the great difficulty in practice has been, in so accurately adjusting the claim of the merchant on the underwriter, that each may be satisfied. But it is evident that this can never be done completely, till the principles and practice of marine insurance are more perfectly understood.

With a sincere hope that this volume will be found useful to the *Merchant*, and a desirable traveling companion to the *Ship-master*, I commit it to the public.

FRANCIS B. DIXON.

New York, 1862.

## PREFACE TO SECOND EDITION.

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It has been my earnest wish in preparing a second edition of this work, to give it the advantage of every correction and improvement which experience and reflection have suggested since its first publication.

Those most conversant with the law of Marine Insurance are fully aware of the impossibility of presenting a work of this kind—uniting theory with practice—in such a light as to render it faultless ; but I have endeavored to convey, by compressing in a small compass, that information in a clear and intelligible form, void of all technicalities, which shall tend to a solution of the doubts and difficulties which almost hourly beset the intercourse between the Assured and Assurer. If I have failed to do this as satisfactorily as I could wish, or the nature of the work requires, it is not to be traced to neglect in the bestowal of great pains and labor, but to inability to thoroughly comprehend the variety of matter which has been the fruitful subject for consideration. My desire to do this has been greatly increased by the favorable reception of the first edition, and if I have succeeded, I shall have expressed my appreciation and gratitude more thoroughly than by any form of words.

FRANCIS B. DIXON.

61 STATE STREET,  
Boston, May 1st, 1866. }

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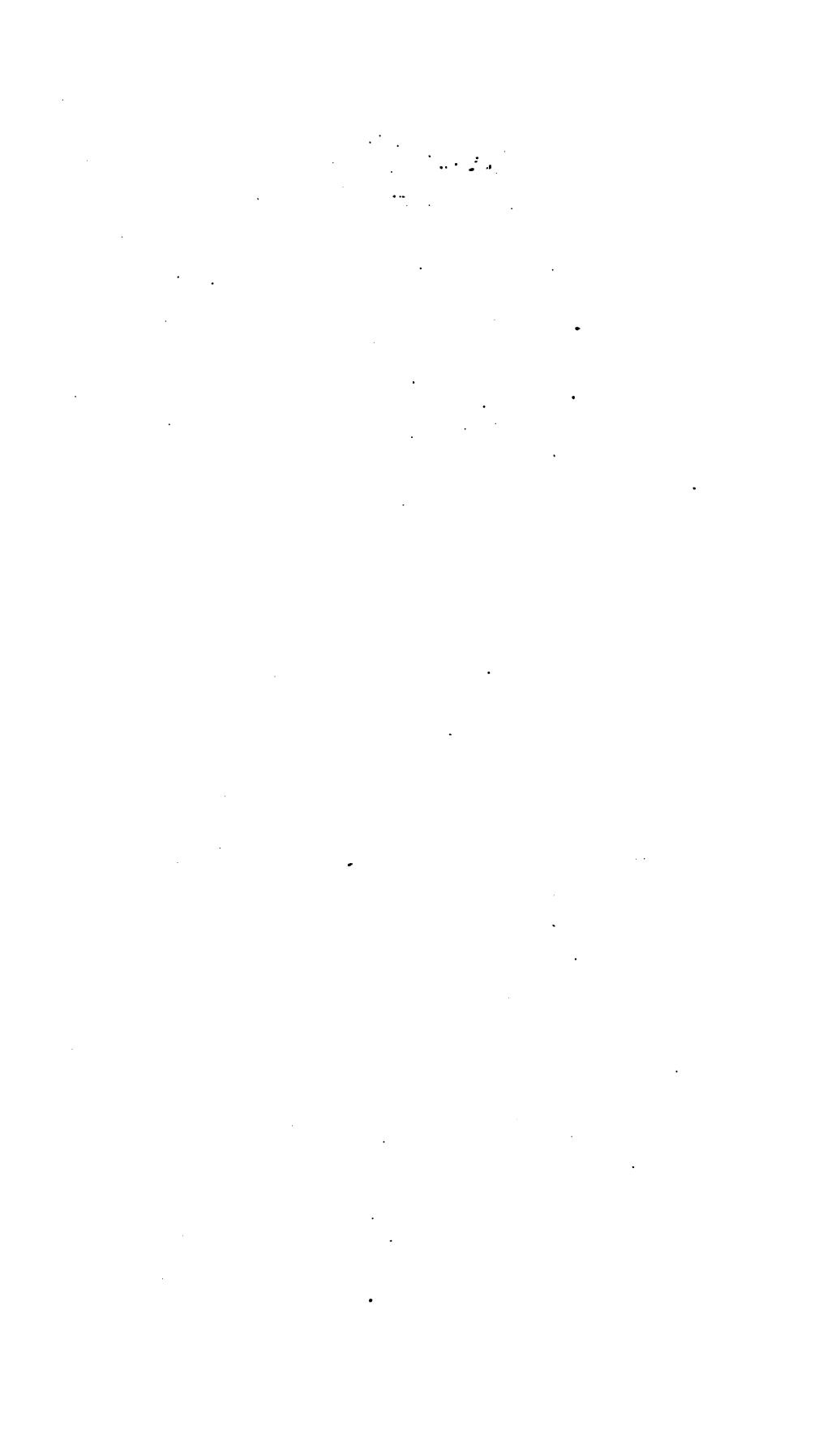
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**GENERAL INDEX.**



## **CHAPTER I.**

### **THE MASTER.**

There is no member of society from whom more is expected and demanded than the ship-master. His office is one of great power, dignity and responsibility. Not only is the whole property of the vessel, her cargo and her earnings within his power, and its safety dependent upon his honesty, his prudence and energy, but the very lives of the crew and the passengers hang as it were on the master's experience and watchfulness. Apart, therefore, from the nautical qualifications of the master, which he ought to possess in no slight degree, there are various other circumstances connected with his profession, which call for the exercise of high qualities of character.

One of the most marked, interesting and important signs of our unequaled national advancement, is the great improvement constantly being made in the art of ship-building. Nowhere has there been so much enterprise displayed in successful effort to excel in this line of arts, as among American ship-builders; as an evidence of the fact, our ships are now the acknowledged models for all nations.

And as our ships are proverbial for their beauty and sailing qualities; so are their commanders for perseverance and physical endurance; and we trust, under the various efforts that are now being made for the perfection and competency of the ship-master, it may soon be said that they are also proverbial for their entire ability to perform the various duties of their profession.

The ship-master, anxious for distinction in his profession, should bear in mind, that he holds a position of great responsibility, and is invested with an authority and discretion, which are not paralleled by any other relation in private life. That in addition to his having the entire command of the ship, he is by law in cases of necessity, or of unexpected and pressing calamity, created an agent for the benefit of all concerned, and that, generally, his acts, under the exercise of a sound discretion, bind all parties interested in the voyage, whether owners, or shippers, or underwriters.

When visiting foreign countries, feeling justly proud of the noble specimen of art over which he has command, he should also bear in mind that ship-masters are, generally, regarded as our principal representatives, and the standard by which the people of those countries judge us; and that, if they are found to have clear, well defined and accurate ideas touching the requirements of commercial law, and to be ready and competent, in all cases of disaster, to exercise their own judgment, without the dictation of consignees, agents or surveyors, who are not always disinterested; it will, added to a reputation for sobriety and integrity, conduce largely to our national honor and reputation.

It is not, however, to be presumed that masters, in the midst of their various duties, can be familiar with all the rules of law governing the multitudinous cases growing out of marine disaster. Nor can they, in all cases, even be presumed to know how particular acts or a particular course of proceeding will affect the different, and sometimes conflicting interests of the ship-owner, the freighter, and of the several underwriters upon ship, freight and cargo. There are a few general principles of law and usage, which may aid him in determining what he ought to do for the advancement of the general interest, on putting into an intermediate port in distress.

The broad and equitable principle, touching these several interests, is, that he should act upon the responsibility of his own judgment and without partiality. The best general rule for him to observe, is, to act as he believes a prudent man would act, who was

the owner of both vessel and cargo, without insurance on either.

An intelligent ship-master keeps himself informed of all the circumstances relative to the disasters which lead to the losses, and disbursements named averages. He enters, or causes to be entered, a faithful and minute record in the ship's log-book, from watch to watch, of all that transpires. On arriving in port, he notes his Protest, and extends it afterwards, by the aid of the log-book, and while all the circumstances of the voyage are fresh in his memory; taking care that it shall be a correct and clear statement of the events of the voyage.

In every disaster, the master should be careful to communicate it, by the readiest mode of conveying intelligence, with all details, both of the mode of the disaster, and of the extent of damage or injury, to owners, consignees or insurers, as they may be most near or easy to be sent to. Duplicates should be sent in case opportunities allow. Neither the owner nor the insurer can act, without them, and delay from want of communicating intelligence is often ruinous.

If the master finds that he requires advice or assistance from others, merchants in the various considerable ports have been recommended by underwriters, to whose advice it will be most useful to him to resort. They are not only of well known respectability, but they, being in the high estimation of merchants and commercial men at home, will greatly aid in the settlement of claims arising out of disaster. Their advice and recommendation will be the safest protection of the upright and honorable ship-master's intentions, as well as the wisdom of his measures.

An active master will seek for good and economical mechanics in repairing his ship; he will superintend the work himself, and will take care that credit for old materials, and discount for prompt payment are duly deducted from the bills. He will also try and find the least expensive means for raising funds to meet the disbursements. Before he leaves the port he will take care to have all bills paid, and entered in a general account; and that account is sometimes certified by the consul or underwriters' agent.

In every case of disaster, the vessel must be repaired, if practicable, without a gross expenditure exceeding three-fourths of the value of the vessel, (that is, one-half after deducting one-third for new), as valued in her insurance, or estimated at the place of beginning her voyage from the United States.

There is an impression current among nautical men, that, if a vessel cannot be repaired at such a cost as will not exceed half her value when repaired, she may be abandoned and sold. This is a false impression, the policies in use in New York, and in New England, require, that the cost of repairs under adjustment, as of a partial loss, shall exceed half the sum insured, or there can be no abandonment. The sum insured means, the valuation of the vessel in the policy, and the cost of repairs means, the cost of materials and labor, *exclusive* of the expenses of delay, port charges, etc.

If full repairs cannot be made at all, or without extraordinary expense, temporary repairs must be put on the vessel, in order to complete the voyage; at its end these repairs will generally be fully allowed and the full repairs may be made after getting into a suitable port for repairing, at the expense of the underwriters, as in other cases.

If spars are sprung, or sails or rigging injured, and cannot be readily replaced, or without great expense, every expedient with which a practised seaman is ready, ought to be resorted to, in order to make the injured articles serve until arrival at some considerable port where the repairs can be done completely. The repairs may then be made with advantage to all parties, without delay of the voyage, or an extravagant extent of expenditure, which is always more or less to the discredit of the ship-master.

When goods are found to be damaged in an intermediate port, the master should take care that they are carefully examined by competent persons, who will recommend the proper steps to be taken for drying them, etc. If there is danger of their perishing or of injuring the other parts of the cargo by their re-shipment, a sale should be made of such portions as will avoid this inconvenience. And where there is an agent of the underwriters resi-

dent, the master should call him in to assist and advise; he should also be invited to attend the survey and sale, certify to the correctness of the papers, and see generally, that due care is used in all parts of the transaction. An important object with the underwriters in desiring to have their agent present, is to prevent that wholesale condemnation of goods, which too frequently occurs.

If the damage is discovered at the *end* of the voyage, at the port of destination, it is also desirable to procure the co-operation of the underwriters' agent. The master, with his assistance, should appoint competent merchants as surveyors, and he should see that a proper investigation is made, that a correct certificate of sound value is given, and that the papers are, in all respects, complete. A very material and useful document in the adjustment of loss, is the actual account-sales of the sound portion of the goods. It is preferable to a certificate of sound value.

In case the vessel shall be subject to salvage, it is proper always to have the vessel and cargo appraised at their value as brought in; and then the alternative be adopted either to bond the cargo and vessel, or to sell, as may be deemed necessary. The vessel, cargo and freight, may always be pledged by bottomry, to relieve the vessel and cargo from her salvage charges; and this is generally expedient. But if this cannot be done, and the vessel and cargo are not perishing so rapidly as to allow of no communication with the home of the vessel, a postponement of the sale ought always to be applied for; until advice or relief can be had from the owners or underwriters.

Judge Marvin, in his excellent Treatise on the law of Wreck and Salvage, page 22, remarks, "The master's authority to settle or to refer to arbitrators a claim for salvage upon his vessel or cargo, depends, like every other exercise of his powers as agent, upon the circumstances which make such settlement or reference necessary and proper. In a country distant from his owners, where he cannot consult them without injurious delay; on a barbarous coast, or in countries where justice cannot be obtained in the courts, his powers must be considered as equal to

the emergency, and his settlement made in good faith ~~will~~ held valid. So also, in his own country, when the demand is small, it may often be the interest of the owners, that ~~the~~ amount should be settled at once by the captain, and the vessel proceed on her voyage, without waiting even a day for the purpose of consulting them. But in every case of settlement of salvage by the master, his conduct will be carefully watched and scrutinized by the courts, and his contracts will not be regarded as binding upon the parties concerned, unless they appear to have been *bona fide*, and such as a discreet owner, placed in like circumstances, would probably have made. If the case arises in our own, or in a foreign country where tribunals having jurisdiction of questions of salvage, are easily accessible, and where decisions are promptly made, and, if injustice is done, appeals may be taken; the master's authority to play the judge himself, or to submit the case to arbitrators, must be considered as very much restricted. Of all the modes of settling a demand for salvage, an arbitration is usually the most injudicious for the master to adopt. He is very liable to be imposed upon, however cautious he may be, as he can scarcely ever know anything of the qualifications of the arbitrators. Besides, however intelligent or honest they may be, there is usually a spirit prevalent, in neighborhoods where shipwrecks often occur, which the French call an *esprit de localite*, which warps the judgments of the most candid and upright men engaged in business, and renders their awards partial and unjust."

It is always to be borne in mind, that nothing but absolute necessity, or a cost to repair of over three-fourths her value, can warrant a sale of the vessel; and not only will a sale otherwise made relieve the insurers, but the purchasers' title can be impeached, whenever the vessel can be found in the United States.

Such is the nature of the contract between the shipper and ship-owner, and such is the law applicable to such contract, that *the master must not abandon the ship or cargo* upon any ground when it is practicable for human exertions, skill and prudence

to save them or any of them from impending peril. A loss of the goods caused by negligence, carelessness or unskilfulness, or any loss, which might have been prevented by human exertions, is not a loss by a peril of the sea, which exonerates the master and ship-owner under their bill of lading from liability. After shipwreck, the master is bound to exert himself to the utmost to save the goods and to attend to their safe custody and preservation. In *Cordes v. Propeller Niagara*, 21 Howard, 7. The Supreme Court of the United States held, that the ship-owner was liable for loss and damage happening to the cargo after the ship had stranded, because the master did not sufficiently exert himself to prevent such loss or damage.

When vessels are stranded on our coast, it frequently occurs that the master abandons the property to the wreck commissioner, under the impression that he is bound to do so. In this he is mistaken. In all cases the master should keep the control of the property, employing the wreck commissioner when necessary, for advice and information, and as one through whom he can procure all needful assistance; and it is his duty to furnish it, when required by a master in distress. It is the master's duty to communicate at once and as expeditiously as possible with the owners or underwriters.

It not unfrequently happens that vessels are sold by masters abroad, simply because funds cannot be readily obtained to pay for repairs, and it has become a system in many places, of late years, to advertise for a loan on bottomry, and in case no offer is made within a few days, to sell the vessel. There is no justification for the sale of the vessel in the mere fact that money cannot be had on bottomry to pay for the repairs she needs. If it happens in any case that a master is unable to get money, and he chooses, for that cause, to abandon his vessel, he may do so without selling her. The right to sell is founded upon a totally different principle. If the vessel is in good safety, and may remain so until her owners or their underwriters can be informed of the want of money to pay for repairs, the master has no legal authority to sell her, and any title he attempts to give will be

invalid. It is only when the vessel is so situated that there is imminent danger of her being totally lost, while waiting for advices from her owners, that the master is justified in selling her.

Judge Duer, in his elaborate decision, in the case of Ruckman v. The Merchants Louisville Ins. Co. 5 Duer, 366, says "a contract of Insurance is emphatically and purely a contract of indemnity; and the interests of commerce, and of the public require that its true character as such, should never be forgotten, and in all doubtful cases be strictly maintained. Hence the breaking up of a voyage ought never to be sanctioned when it is certain that the ship-owner, if uninsured, would have continued to prosecute it, nor consequently, the abandonment of a vessel as unnavigable, ever be sustained when it is certain that the owner, if uninsured would have elected to repair."

Arrangements relating to funds, are, of course, more easy to make when the owners reside in the same country in which the average occurs, and where there are means of communication between the master and his owners. Even in foreign countries it frequently happens that the ship-owner has sufficient credit for the agent or merchant disbursing average expenses on his vessel, to be satisfied with a "Bill of Exchange" upon him, without further security. It is exceedingly advantageous thus to be able to raise funds, and saves considerable expense. But when money cannot be raised in this manner, the master should take an early opportunity of ascertaining the fact, communicating full particulars, with estimates of the probable expense, to his owners; and if his vessel is in a European port, he will probably be able to transmit intelligence and receive a reply by the time the vessel is again ready to prosecute the voyage. Where, however, the port to which the vessel may be driven for repairs, will not admit of the master's consulting with his owners or underwriters, it is very usual, as we have said before, to pay the disbursements by a bottomry bond, but as this is an expensive means of raising money, the master should reduce the amount to be borrowed, as much as possible; to do this he should apply

the sale of any condemned stores of the ship, and the proceeds of any damaged goods, part of the cargo, which surveyors have recommended to be sold on the spot, in diminution of the amount of disbursements. Sometimes it is impossible to raise money at all on bottomry; and sometimes the rate demanded is so high as to appear ruinous, and other means of raising funds are resorted to. The master under such circumstances may proceed to sell a portion of the cargo; but he has no right to sell an entire cargo at an intermediate port, to raise funds to repair his vessel. He has the same right to sacrifice a part that the remainder of the interests may reach their destination, that he has to throw a portion into the sea to procure the safety of the rest. A sale of part of the cargo should not be resorted to except in the most urgent cases, and where the cargo will bring reasonable prices. For, what is sold must be accounted for at the prices it would have brought on its arrival at the port of destination, which frequently will be with a heavy profit, and be ruinous to the voyage. This matter of selling should be carefully examined when proposed; no more than is absolutely necessary should be disposed of; and the latest prices at the place of destination of the cargo to be offered for sale, should be first ascertained, before such a decision is taken, and a selection made of such cargo as is likely to occasion the least loss. The loss on such a sale, will form an item in the average adjustment, and will be applied to the column of disbursements *pro rata*. The loss is discoverable by the adjuster, by making a *pro forma* or simulated account-sales, as if the goods sold had arrived in a sound state, from which the account-sales will be deducted.

Should it be necessary to jettison a part of the cargo, care should be taken to throw overboard the least valuable and most weighty parts of it, if time and other circumstances will permit of the selection being made.

In case the voyage should be inevitably broken up by disaster or misfortunes, the master must carefully procure the proper protests and accounts of what is saved, and of all his expendi-

tures on account. He should cause any balance of money, whether he supposes the vessel and cargo to have been abandoned or not, to be remitted in the surest way, to his owners, or the consignors or consignees of the vessel or cargo. Such remittance will not at all affect the insurance, and will reimburse the owners of the property some part of their loss the soonest.

The documents necessary to support a claim against the underwriters, are the protest, the surveys, the general account of disbursements, the vouchers or receipted bills embraced by the general account, the rate of exchange, the bottomry bond, the value of ship, cargo and freight, a memorandum of the actual wages of master and crew, the ship's policy, and any other papers or letters which may throw light on the transaction, or give any information about it.

The maxim that "freight is the mother of wages," does not apply to the master, and he is entitled to recover of the owners his wages due at the time of the loss of the ship. He may also claim of those whose interests he represents, wages or a reasonable compensation in lieu of wages, for the time and labor expended by him in closing up the business of the wreck; including therein his board, his passage money home with the proceeds, and other necessary incidental charges, to be allowed in the final average statement.\*

It is the duty of the master's consignee to assist him in repairing his ship, and in preserving and taking care of the property. He ought to furnish the master with honest and true accounts, and if he furnishes him with fictitious or overcharged bills, with a view to enable him to make money out of his owners on a settlement with them, or to enable the owners to make money out of the underwriters, he will forfeit his right to recover of the owner the moneys truly advanced by him; and a bottomry bond, taken by him under such circumstances, is void.  
18 Howard, 63.

The master being the agent of others, can make no money for his own use out of any business growing out of the disaster, either in the shape of returned commissions, or overcharged

\* The practice in New York is in accordance with the text, but not so in Boston. *Note to 2d Ed.*

bills, or in any other way; but he may be required to account, under oath, for all such gains.

Marine Insurance, as will be seen in a subsequent part of this work, is a contract of indemnity against those perils, to which ships are exposed in the course of their voyage from one place to another. It gives greater security to the fortunes of private persons by dividing amongst many that loss, which would ruin an individual. This security tends greatly to the advancement of trade and navigation, because the risk of transporting and importing being diminished, merchants will more easily be induced to engage in extensive trade, to assist in important undertakings, and to join in hazardous enterprises. But it is not individuals only that derive advantages from the increase of commerce, the general welfare of the public is also promoted. And notwithstanding the system of insurance is so advantageous to the spread and safety of commerce, it happens to be peculiarly open to fraudulent attempts. These attempts at fraud are made in various ways. They sometimes consist in getting the underwriters to pay for repairs, not arising from perils insured against. Sometimes in making them pay for old defects or decay, discovered when the vessel was opened to effect repairs of recent damage. And sometimes in making them pay for improvements. When the metal sheathing has been on the ship so long that it needs renewing, an owner has sometimes been known to prevail on the surveyors to state, that to repair the damages, it is requisite to strip the ship and re-metal her. If the surveyors are not men of integrity, they can greatly assist a dishonest owner or master in defrauding the underwriters. Hence the motive for underwriters desiring their agent to be present on the holding of surveys, and their suspicion of the entire correctness of the master's proceedings, when he has refused or neglected to consult the agent. Other frauds consist in goods not unfrequently being sent on board or alongside, in bad order, and in a damaged state. Should this fact escape detection, the dishonest merchant will have no difficulty in recovering the amount of damage from the underwriters. When the

master does discover that the goods are damaged, letters of *in* demnity are sometimes offered by the shippers for signing *the* bill of lading "in good order." This is nothing less than *con-*niving at fraud, and injuring the character of the master *and* of the ship in the estimation of the underwriters. Every honorable ship-master, should therefore reject with scorn proposals of this nature. Other frauds consist in false accounts, false quantities and prices; bills simulated together, such materials and labor never having been employed about the ship; false or colored protests; and the concealment of discounts or allowances. A most improper proceeding is not unfrequently taken in intermediate ports, viz: that of making presents to the master to induce him to agree to pass exorbitant charges. And proposals are sometimes made by the master's consignee or agent, to divide the custody commission, provided the master will agree to have his cargo discharged, stored and reshipped, in cases where there is no necessity of doing so. In some ports this commission is very exorbitant, varying from  $1\frac{1}{2}$  to 5 per cent. In no case ought the cargo to be unladen without the clearest necessity; it is not only very expensive, but always creates a great delay, and is apt to end in serious injury to the cargo. When unloading is absolutely necessary, the intelligent ship-master will be careful to stipulate against the enormous charge of commission named above, as no substantial responsibility is thereby incurred; and in most cases a charge of commission for such transactions is considered unreasonable. The master can always ascertain before he proceeds to discharge his cargo, what this commission will be, and should an unreasonable sum be required, he can obviate the difficulty by keeping the entire control of the cargo in his own hands, and hiring store-room himself. A proper charge for storage and a regular commission for the general business of the ship under repair, will afford, in most instances, a fair and adequate remuneration. It is always proper to have suitable men employed to watch and take care of the cargo, whose compensation will fall into an average, general or partial, and without any deduction;

so, also, any reasonable compensation to the merchant for his actual trouble, responsibility and services, will be justly chargeable and freely allowed. The difference between such charges and a commission on the whole cargo, will be obvious to every ship-master.

Another species of fraud, is, that salvors often present the captain with a share of their gain, that he, on his part, may not resist their heavy claims, and may afterwards give a false account of the accident and its consequences.

A ship-master, who connives at any of these frauds, places himself in that pitiable condition in which a man finds himself when he has lost his honor. We are satisfied that every honorable man and true American seaman, will reject with scorn, every insulting proposal of this nature.

When any of these fraudulent practices are discovered, it not only blasts the master's reputation, but probably ruins his pecuniary prospects for life. His character becomes known to the underwriters throughout the country; and they will, of course, refuse to write on a ship in charge of a man of doubtful integrity. These practices too, when discovered, excite in the underwriters and others who were intended to be defrauded by them, a just and natural indignation; which frequently results in creating a suspicion in cases where no ground exists for it; and thus, by the unscrupulous selfishness of one man an injury may be done to a number of innocent persons.

The mode of insurance now adopted in some of the principal ports of the United States, makes the merchants mutually insurers for each other. They thus are all interested in seeing that every proper measure for the protection and saving of the property at sea from damage or loss is adopted. They are now all interested as insurers in the promotion of justice, and moderation in the settlement of claims for loss; and the ship-master who faithfully discharges his duty will rapidly advance his character and reputation, while he who fails in it will find the universal interests of commercial men, as well as their sense of justice active in exposing him.

## **CHAPTER II.**

### **MARINE INSURANCE.**

#### *What is Marine Insurance?*

It is a contract whereby one party for a stipulated premium, undertakes to indemnify the other against certain perils, or sea risks, to which his ships, freight and cargo, or some of them, may be exposed, during a certain voyage, or a fixed period of time.

#### *Definition of terms.*

The party interested in the property insured, is called the *insured* or *assured*.

The party undertaking to indemnify the assured against loss is called the *insurer* or *underwriter*.

The property insured itself is called the *subject of insurance*.

The title or interest which the assured has in this property, is called his *insurable interest*.

The agreed consideration or stipulated sum for which the underwriter undertakes to indemnify the assured is called the *premium*.

The instrument by which the contract of indemnity is effected, is called the *policy*.

That which is insured against, is loss arising from marine perils.

These perils are in technical language, sometimes called *the perils insured against*, and sometimes the *risks covered by the policy*.

The interest of the assured is technically said to be *covered by the policy*, when the sum or aggregate of sums insured in the policy is sufficient to afford him full compensation for whatever loss that interest may sustain.

If the value of his interest exceeds the sum insured, the excess of interest is said to be "*uncovered by the policy*," and the assured to be "*his own insurer to that extent*."

When the liability of the underwriter commences under the contract, the technical mode of expressing this is by saying that the "*policy attaches*," or "*the risk begins to run*," from that time.

*By whom may the contract of insurance be made?*

It may be made, generally, by any parties competent to enter into any contract. All persons, whether aliens or natives, may be insured, for it is a contract authorized by the general law of nations. An exception however, is made against an alien enemy. An insurance for his benefit, or to cover any property or interest belonging to him, is void, and no contract of insurance can be enforced in his favor in our courts.

*What is the nature of the indemnity afforded by Marine Insurance?*

The general principle and purpose of insurance, is, that of giving indemnity against actual loss and no more.

It is not intended by the contract of Marine Insurance to ~~put~~ the assured, in the same situation, in case of loss, as he ~~would~~ have been in, had the adventure terminated successfully, ~~but~~ only to replace him, as nearly as may be, in the position he occupied at the outset of his enterprise.

Whether the assured receives a full indemnity for his loss depends on the sufficiency of the sum he has insured to cover the whole interest he has at risk. If the whole sum insured be sufficient to cover the whole value of the subject insured, then the assured in case of loss will receive a full indemnity; but if the sum insured fall short of this, it is plain that the assured will receive less than a full indemnity. The general practice is, to value both the ship and goods at the sum which they are severally worth to their respective owners at the outset of the adventure, adding thereto the premium, and all costs of effecting the insurance. The subject of valuation, however, will be more fully considered hereafter.

Mr. Phillips, in his valuable treatise on the law of insurance, says: "The indemnity intended in assurance is not the putting of the party insured into as good a condition as he would, in fact, have been in had no loss happened. It means the repayment of the expenses incurred, and the payment for as much of the insured subject as is lost, at its market value at the commencement of the risk, or its value as agreed in the policy. Where such value exceeds the real value of the subject at the time of the loss, the assured is, in fact, more than indemnified; where it is less, he is, in fact, not fully indemnified; but he is in either case precisely indemnified according to the principles and stipulation of the contract." Phil. on Ins., vol. 1, 3.

## CHAPTER III.

### OF THE POLICY AND ITS GENERAL CONSTRUCTION.

#### *What is a Policy of Insurance?*

The written instrument in which the contract of marine insurance is embodied is called a *policy* of insurance.

The policy, as will be seen by the following common form, now in use in New York, consists of a printed form interrupted by spaces, in which is written the special matter of each individual case; such as the names, dates, and places and species of interest, rate of premium, and all particular conditions which are to form part of the agreement.

#### COMMON FORM OF CARGO POLICY. (NEW YORK).

By the —— Insurance Company.

—  
No. —

ON ACCOUNT OF —— In case of loss to be paid to —— Do — make Insurance

and cause —— to be insured, lost or not lost, at and from ——

— upon all kinds of lawful goods and merchandise, lading or to be laded on board the  
good —— whereof is master for this present voyage —— or whoever else shall go for  
master in the said vessel, or by whatever other name or names the said vessel, or the master there-  
of, is or shall be named or called.

~~Summum,~~  
 \$  
 Policy, .....1.25  
 \$  
 \_\_\_\_\_

AND in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said ————— (the amount of any Note or Notes given by the assured for premiums, if unpaid, being first deducted,) but no partial loss, or particular average, shall in any case be paid, unless amounting to ~~five~~ per cent. PROVIDED ALWAYS, and it is hereby further agreed, That if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said —— INSURANCE COMPANY shall be answerable only for so much as the amount of such prior assurance may be deficient towards fully covering the premises hereby assured; and the said —— INSURANCE COMPANY shall return the premium upon so much of the sum by them assured, as they shall be by such prior assurance exonerated from. AND in case of any insurance upon the said premises, subsequent in date to this Policy, the said —— INSURANCE COMPANY shall nevertheless be answerable for the full extent of the sum by them subscribed hereto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. IT IS ALSO AGREED, That the property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. AND it is further agreed, That in case of total loss, shall be claimed, for or on account of any damage or charge to the said vessel, the only basis of ascertaining her value, shall be her valuation in this policy; and if not valued herein, then her actual value at the time of the inception of this risk at the port to which she then belonged. AND LASTLY, it is agreed, that if the above vessel, upon a regular survey, should thereby be declared unseaworthy, by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this Policy.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

— In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured, is to be retained by the assurers.

IN WITNESS WHEREOF, the President or Vice-President of the said —— INSURANCE COMPANY hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their Secretary, in New-York, the —— day of —— one thousand eight hundred and sixty—

—

SECRETARY —————

PRESIDENT —————

### *What is the general construction of the Policy?*

The terms used in a policy of insurance are to be construed in that sense which the known usages of trade, or the use and practice as between underwriters and the assured, have given to them.

Policies of insurance are generally the most informal instruments that are brought into courts of justice, and there are no instruments that are more liberally construed in order to effect the real intention of the parties, where such intention can clearly ascertained.

\* See note page 87

Most policies contain purposes which are suited to the particular circumstances of each case, or at least which serve the general purposes of the parties. These purposes are often of great importance, and undervalued by them, and much more important than the fact that the law did not recognize them as the true intention when used as a defense.

The validity and enforcement of a will or intestacy act are governed by the laws of the state where it is made, and in places to which it has reference, if there is no such law under the

The problem is how to make a system that is stable, robust and has the ability to learn from experience.

In addition to the above, it is also necessary to have  
of a printed form that can be used to make a  
copy. These forms may be made by the manufacturer  
and some examples of the same will be in the  
presented at your meeting. The forms consist of  
two or three pages of paper which are to be filled in  
and copied. These forms are to be used in making the  
printed form described above. The forms of  
printed form will be given to you in the same manner  
as the other forms of printed form.

This is all I can say about regarding the children  
present here at the time of my interview last Friday.  
I am sorry to say, but it is clear that the four boys  
whom you mention were present but there was also an older  
boy there who was not mentioned. This younger boy is probably  
about 12 or 13 years old. He is very pale and  
very thin. He has dark hair and a very pale complexion.  
He was with the two others who accompanied him to  
the beach.

19. *Leucosia* *gigantea* *var.* *gigantea*  
20. *Leucosia* *gigantea* *var.* *gigantea*  
21. *Leucosia* *gigantea* *var.* *gigantea*

The usages of trade, as already mentioned, are to govern the construction of terms used in a policy of insurance. But a usage, in order to affect the parties to a policy, must be conformable to law, and applicable to insurance.

No usage is permitted to contradict the plain and positive provisions of the policy. Thus a usage not to pay for a particular part of the vessel's apparel or furniture, as a boat when it is in a certain place on the vessel, is invalid if the place is that where it is usually carried.

In *Marcy v. Whaling Ins. Co.*, 9 Metcalf, 363, Mr. Chief Justice Shaw remarked; "usage may be admissible to explain what is doubtful; it is never admissible to contradict what is plain and free from ambiguity, otherwise the parties will be arbitrarily held to mean differently from that which they havewritten."

The strongest instances that can be given of the application of this rule have occurred in those cases where the risk on goods being expressly made by the policy to begin from their loading at a certain named place, the courts have uniformly decided that the policy could only attach on goods loaded at that very place, and not elsewhere; even although there were frequently strong reasons for supposing that such construction was contrary to the real intention of the parties.

On the same principle, where the risk on goods was, by the policy, made to continue "*'til discharged and safely landed*," Lord Kenyon would not admit evidence of usage to show that this expression in the particular trade insured, meant "until the ship was moored twenty-four hours in safety," because this was inconsistent with the plain meaning of the policy, which was too clearly expressed to require or allow of any such explanation. Arnould on Ins., vol. 1, p. 80.

In *Mercantile Mut. Ins. Co. v. State Mut. F. & M. Ins. Co. of Penn.*; 25 Barb. 819, the question arose as to the construction of the following order for re-insurance; "*Re-insurance is wanted by the Mercantile Mut. Ins. Co. for \$—, on cargo on board of the ship 'Great Republic,' at and from New York to Liverpool, on the excess of risks the applicants may have over \$50,000, net to*

*exceed \$15,000.*" At the time of the loss the plaintiffs had insured less than \$50,000 on the cargo of the ship, but they had risks on the freight and on the ship, which when added to the amount on the cargo, amounted to over \$65,000. It was held that the defendants only engaged to insure the excess of risks on the cargo, and that evidence of a custom of the parties and of the port of New York in adjusting contracts of re-insurance, upon such applications, to regard the word "*excess*" in the application, as applicable to the whole amount of insurance at risk, in or upon the vessel, and that the premiums upon open policies had previously been adjusted and paid between the present parties upon that principle, was excluded, there being no ambiguity on the face of the instrument.

In Rankin v. Am. Ins. Co. of N. Y., 1 Hall, 619, the defendants offered to prove "that by the established usage of trade in the port of New York and in other ports, the master of the vessel is in all cases responsible for any damage sustained by the goods delivered by him to the owner or consignee, unless there has been an actual survey made on board the vessel by the wardens of the port or other officers, and on such survey the surveyors shall have found that the goods were properly stowed, and were damaged on the voyage by the perils of the seas. That by a similar usage as between the assurers and the assured, the survey so made by the wardens, is a document indispensable to be produced in order to charge the underwriters, and that the preliminary proof is deemed insufficient, unless such document be exhibited as a part of it." Oakley, C. J., said: "By the terms of the policy in the present case, the defendants bound themselves to pay all damage to the property insured arising from the perils of the sea; and the attempt now made is to introduce into the policy a condition that they shall not be responsible unless such damage is ascertained in a particular mode, and that too by the aid of third persons, over whom the assured has no control. Such a condition would, in my judgment, vary the legal obligations of the defendants, as ascertained by the plain language of the policy."

In some cases it has been held, that not only must a usage be shown, but the further fact must be proved that the underwriters have assented to the usage by paying claims arising under it. Thus, under a policy on "copper," from New York to Taunton, a part of which was carried on deck and a part in the hold, it was proved to be customary to carry the article on deck, but the insurers were held not to be liable for the loss of the part so carried, as the case itself showed it not to be the uniform practice to carry it on deck, and the usage proved was accordingly held not to be applicable, for the purpose of affecting the liability of the underwriters. *Taunton Copper Co. v. Merchants Ins. Co.*, 22 Pick, 109.

No particular period is requisite to the establishment of a usage. "The true test of a usage," say the Supreme Court of New York, "is its having existed a sufficient length of time to have become generally known." 1 Caines 45, 9 Wheat. 581.

A usage may be local and confined to the particular place where a contract is made, but contracting parties are not bound by the usage of places, other than that to which the contract has reference. Thus, a policy underwritten in New York on a Rhode Island ship and cargo, for a whaling voyage in the Pacific, was held not to be governed by the usage of Nantucket as to similar voyages. *Child v. Sun Mutual Ins. Co.* 3 Sandf. 26.

"The same rule of construction," says Lord Ellenborough, in *Robertson v. French*, 4 East. 185, "which applies to other instruments, applies equally to this, viz: that it is to be construed according to the sense and meaning, as collected in the first place from the terms used in it, which terms are to be understood in their plain, ordinary, and popular sense, unless they have generally, in respect to the subject matter, as by the known usage of trade or the like, acquired a peculiar sense, distinct from the popular sense of the same words, or unless the context evidently points out that they must, in the particular instance, and in order to effectuate the immediate intention of the parties, be understood in some other special and peculiar sense."

In conclusion, the true principle of construction as applied to

policies, is, that if the clauses of the policy are in themselves clear and unambiguous, the courts will not admit extrinsic evidence to contradict, to vary, or to explain them. If on the contrary, they are obscure and ambiguous, the courts may resort to any means of explaining them, which may be supplied by either the rules of the common law, the general usages of trade, or the particular circumstances of the case.\*

\* In examining, for the first time, any question under a policy of insurance, it is necessary to ascertain whether the contract has received a practical construction by merchants and underwriters; not through any partial or local usages, but by the general consent of the mercantile world. Such a practical construction, when clearly apparent, is of great weight, not only because the parties to the policy may be presumed to have contracted in reference to it, but because such a practice is very high evidence of the general convenience and substantial equity of it as a rule.

And it should not be forgotten, that not only in the introduction of this branch of law into England by Lord Mansfield, but in its progress since, both there and here, a constant reference has been held to the usage of merchants, and the science of insurance law has been made and kept a practical and convenient system, by avoiding subtle and refined reasoning, however logical it may seem to be, and looking for safe practical rules. Note to 2d Ed.

## **CHAPTER IV.**

### **OF VALUED POLICIES.**

*What is the definition of a valued policy?*

Policies are of two kinds, valued and open. A *valued policy* is one in which the agreed value of the subject insured, as between the assured and underwriter, for the purposes of the insurance, is expressed on the face of the policy.

*What is the effect of valuation in the policy?*

Every common printed form of policy, in this country, contains the following clause. If a vessel policy, "the said vessel, tackle, etc., hereby insured, are valued at \_\_\_\_\_" and if a cargo policy "the said goods and merchandise, hereby insured, are valued at \_\_\_\_\_."

The difference between an open and valued policy *in point of form* is solely this; that in a *valued* policy, this blank is filled up with the sum at which the parties agree to fix the amount of the insurable interest; in an *open* policy it is left in blank.

Mr. Arnould states the difference, in point of *effect*, between

a valued and an open policy, thus "that under an open policy, in case of loss, the assured must prove *the actual value of the subject of insurance*; under a valued policy he need never do so, except in cases of *enormous* or *fraudulent* over-valuation; except in such cases, the valuation in the policy is conclusive, and the case is the same as though the subject of insurance was actually proved to have been worth the sum at which it is valued." Arnould on Ins., vol. 1, 124.

The value of a vessel is not so certain as that of goods, and cannot usually be so satisfactorily and exactly proved. Insurance on vessels is therefore commonly made by valued policies. For the same reason, freight is usually valued. But goods are more frequently insured in open policies, as the value is easily proved by the invoices, or by showing the price current at the time.

*What is the effect of valuations, where there are prior insurances, or amounts have been paid upon other policies?*

This question is a much disputed one, and it is difficult, if not impossible, to deduce from the adjudicated cases, any clear and well defined rules to determine the effect of valuations in this case.

For the purpose of illustration, we will presume that insurance is effected in two valued policies, as follows:

*1st October, 1861.* Atlantic Ins. Co., \$5,000 on freight, valued at the actual valuation.

*31st October, 1861.* Pacific Ins. Co., \$5,000 on freight, valued at \$5,000.

A total loss having been proved, what is the liability of the Pacific Ins. Co. (if any) under their policy, supposing the interest in freight to be \$8,000? Both policies containing the "American Clause," or usual clause as to prior and subsequent in-

Warranted by the assured free from loss or expense arising from capture, seizure, detention, or imprisonment of any amount thereof, whether incurred or sustained, and whether by governments or by authorities or by unchartered States, or by unchartered or lawless persons therein, or otherwise, and whether occurring in a port of capture or elsewhere, anything in this policy is to the contrary notwithstanding.

EXCLUDING the adventure upon the said goods and merchandises, from and immediately following the loading thereof on board of the said vessel, at \_\_\_\_\_ aforesaid, and so shall continue and endure until the said goods and merchandises shall be safely landed at \_\_\_\_\_ aforesaid. AND it shall and may be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accident, without prejudice to this insurance. The said goods and merchandises hereby insured, are valued at

TOUCHING the adventures and perils which the said —— INSURANCE COMPANY is compelled to bear, and takes upon itself in this voyage, they are of the sea, men of war, fires, enemies, pirates, robbers, slaves, jettisons, letters of marit and counter-marit, reprisals, takings of sea, arrests, rewards, and detentions of all kinds, garrisons, or people, of what nation, condition, or quality soever; barratry of the master and mariners, and all other perils, losses and misfortune, that have or shall come to the hurt, detriment, or damage of the said goods and merchandises, or any part thereof. AND in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, —— factors, servants and assigns, to sue, labor, and travel for, in and about the defense, safeguard, and recovery of the said goods and merchandises, or any part thereof, without prejudice to this insurance; nor shall the note of the insured or insurer, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; to, the charges whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured; having been paid the consideration for this insurance, by the assured, or —— assigns, at and after the rate of

AND in case of loss, such loss to be paid in thirty days after proof of loss, and proof of interest in the said —— (the amount of any Note or Notes given by the assured for premium, if unpaid, being first deducted), but no partial loss, or particular average, shall in any case be paid, unless amounting to five per cent. PROVIDED ALWAYS, and it is hereby further agreed, That if the said assured shall have made any other assurance upon the premises aforesaid, prior in date to this policy, then the said —— INSURANCE COMPANY shall be answerable only for so much as the amount of such prior assurance may be deductible towards fully covering the premises hereby assured; and the said —— INSURANCE COMPANY shall return the premium upon so much of the sum by them assured, as they shall be by such prior assurance exonerated from. AND in case of any insurance upon the said premises, subsequent in date to this Policy, the said —— INSURANCE COMPANY shall nevertheless be answerable for the full extent of the sum by them subscribed hereunto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent assurance had been made. IT IS ALSO AGREED, That the property so warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention, for or on account of any illikit or prohibited trade, or any trade in articles contraband of war.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to this Company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

**MEMORANDUM.** It is also agreed, that bar, bundle, rod, hoop and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker-work and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, vegetables and roots, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting and canisa, except in boxes, free from average under twenty per cent. unless general; and sugar, flax, flax-seed and bread, are warranted by the assured free from average under seven per cent. unless general; and coffee, bags or bulk, pepper, in bags or bulk, and rice, free from average under ten per cent. unless general.

Warranted by the assured free from damage or injury, from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea perils. In case of partial loss by sea damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise, as far as practicable. Not liable for leakage on molasses or other liquids, unless occasioned by stranding or collision with another vessel.

If the voyage aforesaid shall have been begun, and shall have terminated before the date of this Policy, then there shall be no return of premium on account of such termination of the voyage.

In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured, is to be retained by the assured.

IN WITNESS WHEREOF, the President or Vice-President of the said —— INSURANCE COMPANY hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their Secretary, in New-York, the —— day of —— one thousand eight hundred and sixty—

Sure, J. M. —————

—

Dominick, —————

—

July, ..... 1.25

—

—

————— SECRETARY ——————

————— PRESIDENT ——————

**VESSEL POLICY (TIME) COMMON NEW YORK FORM.**

By the \_\_\_\_\_ Insurance Company.

No. —

On Account of \_\_\_\_\_ In case of loss to be paid to \_\_\_\_\_ Do  
make Insurance and cause \_\_\_\_\_ to be Insured, lost or not lost, at and from

upon the body, tackle, apparel, and other furniture, of the good—  
called the \_\_\_\_\_ whereof is master for this present voyage, \_\_\_\_\_ or whoever  
else shall go for master in the said vessel, or by whatever other name or names the  
said vessel, or the master thereof, is \_\_\_\_\_ shall be named or called.

AND it shall and may be lawful for the said vessel, during the term insured by this policy, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accident, without prejudice to this insurance. The said vessel, tackle, &c., hereby insured, are valued at

— without any further assent to be given by the assured to the assured, or any of them, for the same.

TOUCHING the adventures and perils which the said — INSURANCE COMPANY is contented to bear, and takes upon itself in this voyage, they are of the sea, men of war, fires, enemies, pirates, robbers, thieves, fortresses, letters of marri and counter-mart, reprisals, takings at sea, arrests, restraints, and detentions of all kings, princes, or people, of what nation, condition or quality soever, bartry of the master and mariners, and all other perils, losses and misfortunes, that have shall come to the hurt, detriment, or damage of the said vessel, or any part thereof. AND in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, — factors, servants and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said vessel, or any part thereof, without prejudice to this insurance, to the charge whereof, the said Insurance Company will contribute according to the rate and quantity of the sum herein insured nor shall the acts of the insured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of an abandonment; having been paid the consideration for this insurance, by the assured, or — assigns, as and after the rate of

2000-2001

~~Premium,~~  
~~\$~~  
~~Policy, ..... 1.25~~  
~~\$~~  
~~=====~~

AND in case of loss, such loss to be paid in thirty days after proof of loss, and proof of loss in the said ——— (the amount of any Note or Notes given by the assured for premiums, if paid, being first deducted,) but no partial loss, or particular average, shall in any case be paid, less amounting to five per cent. PROVIDED ALWAYS, and it is hereby further agreed, That the said assured shall have made any other assurance upon the premises aforesaid, prior in date this policy, then the said ——— INSURANCE COMPANY shall be answerable only for so much the amount of such prior assurance may be deficient towards fully covering the premises here assured; and the said ——— INSURANCE COMPANY shall return the premium upon so much the sum by them assured, as they shall be by such prior assurance exonerated from. AND in case of any insurance upon the said premises, subsequent in date to this Policy, the said ——— INSURANCE COMPANY shall nevertheless be answerable for the full extent of the sum by the subscriber hereunto, without right to claim contribution from such subsequent assurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no subsequent assurance had been made. IT IS ALSO AGREED, That the property be warranted by the assured free from any charge, damage or loss, which may arise in consequence of a seizure or detention, for or on account of any illicit or prohibited trade, or any trade in articles contraband of war. AND it is further agreed, That in case a total loss shall be claimed, for or on account of any damage or charge to the said vessel, the only basis of ascertaining her value, shall be valuation in this policy; and if not valued herein, then her actual value at the time of the inception of this risk at the port to which she then belonged. AND LASTLY, it is agreed, that if the above vessel, upon a regular survey, should thereby be declared unseaworthy, by reason of her being unsound or rotten, or incapable of prosecuting her voyage on account of her being unsound or rotten, then the assurers shall not be bound to pay their subscription on this Policy.

Warranted not to abandon in case of capture, seizure, or detention, until after condemnation of the property insured; nor until ninety days after notice of said condemnation is given to the Company. Also warranted not to abandon in case of blockade, and free from any expense in consequence of capture, seizure, detention, or blockade, but in the event of blockade to be at liberty to proceed to an open port and there end the voyage.

—— In all cases of return of premium, in whole or in part, one-half per cent. upon the sum insured, is to be retained by the assurers.

IN WITNESS WHEREOF, the President or Vice-President of the said ——— INSURANCE COMPANY hath hereunto subscribed his name, and the sum insured, and caused the same to be attested by their Secretary, in New-York, the ——— day of ——— one thousand eight hundred and sixty

—

S E C R E T A R Y —————

P R E S I D E N T —————

### *What is the general construction of the Policy?*

The terms used in a policy of insurance are to be construed in that sense which the known usages of trade, or the use and practice as between underwriters and the assured, have given to them.

Policies of insurance are generally the most informal instruments that are brought into courts of justice, and there are no instruments that are more liberally construed in order to effect the real intention of the parties, where such intention can be clearly ascertained.

\* See note page 37

Most policies contain phrases made necessary by the peculiar circumstances of each case, or introduced for the especial purposes of the parties. These phrases are, for the most part, mercantile phrases. They are used by merchants among themselves, and understood by them; and much injustice would be done if the law did not interpret them in the way in which they are used and understood.

The validity and construction of a policy of insurance, are also governed by the laws of the place where it was made, and of the places to which it has reference in respect of acts to be done under it.

The predominant intention of the parties in a contract of insurance, is indemnity, and this intention is kept in view and favored in putting a construction upon the policy.

In policies of insurance, as in all written instruments consisting of a printed form, there are blanks which are filled in manuscript. These written words are taken to be the immediate language and terms selected by the parties themselves for the expression of their meaning; and greater strictness of construction is applied to these clauses and stipulations which the parties have themselves introduced, than to the words of the printed formula, which are adapted to all other cases of insurance on similar subjects, and not confined to the circumstances of the particular adventure.

Where an action was on a policy containing the common printed memorandum, *salt, wheat, &c.*, are warranted free from average, unless general; and all other goods free from average under five per cent., unless general, and there was also an additional clause in writing, which provided that the goods insured, (being cotton and sugar,) should be free of average under ten per cent. It was held, that the clauses were inconsistent with each other, but that the written clause should be considered as expressive of the actual understanding between the parties, and that the goods were exempted from all average losses, whether general or particular, under ten per cent. *Coster v. The Phenix Insurance Co.*, 2 Wash., C. C. Rep. 51. 2 Condy's Marsh, on Ins., 547, note.

*Are the underwriters on cargo, liable to pay contribution only in the proportion which the sum insured bears to the actual value; or are they liable for the whole amount assessed upon the cargo in general average?*

According to the practice in *Boston*, where the contributory value exceeds the value in the policy, the underwriter is liable on the proportion which the sum insured bears to the actual value. *Clark v. Unit. F. & M. Ins. Co.*, 7 Mass. R. 365.

In *New York*, the practice is different, under a valued policy in which the whole value as fixed in the policy is insured, the underwriters contribute the whole amount assessed upon the subject in general average, whether it contributes on a value greater or less than that at which it is fixed in the policy, and so proportionally, if one half, one quarter, or any other proportion of the value, is insured.

Where the cargo, however, is not fully insured, the underwriters certainly can only be called upon to pay on a value within, or co-extensive with the value insured; for it would be absurd to suppose that a shipper who only partially insures his goods, should have all the benefit which he might have secured if he had paid for an insurance on the full amount of his interest.

and consequently the valuation attaches and becomes effectual, upon the assumption that there was freight at risk, the value of which is agreed to be the sum fixed for that purpose.

Whatever sum the insured receives for that freight which was the subject of valuation and insurance, must be deducted from the amount of the valuation in adjusting a loss otherwise total.

But money received as freight, though earned in the course of the voyage or period of time described in the policy, if it was not part of that freight to which the insurance is attached, and the valuation applicable at the time of the loss, is not to be deducted from the amount of the valuation in adjusting a total loss of freight. For example: if insurance be made on the entire freight for a round voyage from Boston to Liverpool and thence back to Boston, the entire freight for the round voyage being valued at ten thousand dollars, and the outward cargo be delivered at Liverpool, and freight earned thereon, and the vessel be totally lost on the return passage, the amount received on the outward freight is to be deducted.

The entire freight of the round voyage being the subject of insurance and valuation, whatever was received by the owner, out of that subject, was received, as Emerigon expresses it, to the use of the Underwriters.

But if the freight of no particular voyage was in contemplation, and the insurance was on time, then the policy and the valuation attach successively and distinctly on each successive freight which is at risk.

Each successive freight, whether for a round voyage or one passage, becomes the subject insured and valued, and consequently what has been received on account of previous voyages or passages not being any part of the subject insured and valued at the time of the loss is not to be deducted from the valuation.

The foregoing rules respecting the effect of the valuation of freight, are deemed to be settled  
*Note to 2d Ed.*

## **CHAPTER V.**

### **OF OPEN POLICIES.**

*What is the definition of an open policy?*

An open policy is one in which the amount of the interest is not fixed by the policy, but is left to be ascertained by the assured, in case a loss should happen.

The expression "open policy" is also sometimes used in reference to one kept open for new subscriptions, or one on cargo kept open for new subjects of insurance, in which latter case the voyage and risks are described in the body of the policy, and additional amounts or new cargoes are afterwards entered, from time to time, at the foot of the instrument, by merely specifying the amount, or by naming a different vessel, or specifying whatever circumstance distinguishes the risk or subject from those described in the body of the policy.

*How is the amount of insurable interest ascertained in an open policy?*

The amount of insurable interest in all open policies, is taken

to be that which they are worth to the assured at the commencement of the risk, with the premium added ; and the principle upon which the amount of indemnity recoverable by the assured, in case of loss, is regulated, is, that he must be replaced as nearly as possible in the same position as he was in at the outset of the adventure, and before effecting the insurance, without paying any regard to the profit he may have missed making, in the case of goods, or to the wear and tear by which his property has been deteriorated in the case of the ship.

*How is a particular average loss on cargo usually adjusted under an open policy ?*

In this country, it has been a matter of doubt with the courts and text writers, whether in the adjustment of a loss on cargo under an open policy, the value of the goods is to be taken to be their prime cost, their invoice price, or their actual market value at the commencement of the risk.

Mr. Justice Washington, in *Carson v. Marine Ins. Co.*, 2 Wash. C. C. 468, ably contended, that the market price of the goods at the commencement of the risk, is the true basis of calculation, and that the invoice price furnishes no rule of indemnity in any case where it exceeds, or is less than this market value.

In other cases, however, the invoice value has been taken, though different from the market value.

The difficulties in the way of adopting the market value as the insured value in an open policy, are in bringing forward proof of such value.

The rule, therefore, usually adopted in practice, is, *to take the invoice price as prima facie proof of the real insurable value, to which is added the shipping charges and premium of insurance, with the per cent. of advance as agreed in the policy, if any agreement be made.*

When the invoice price of goods, shipped from a foreign port, where there is no current rate of exchange, is expressed in the currency of the foreign country to which such port belongs, the true mode of ascertaining the insurable value is to estimate what would be the worth of the foreign money in which the invoice value is expressed, supposing that it had been shipped in specie, instead of the goods, to the port of destination; that is to say, the invoice value of the goods is to be ascertained by calculating what the foreign coin in which it is expressed would be worth to the consignee of the goods, after paying the premium of its insurance, the freight and other expenses of its transportation.

And where there is a current rate of exchange at the foreign port of loading, the most equitable way of ascertaining the insurable value of the goods, is to calculate the value of the foreign coin in which their invoice price is expressed at the par of exchange; for upon this principle the underwriter will not be affected by the rise or fall in the rate of exchange between the period of effecting the policy and adjusting the loss.

In perishable commodities; the loss of weight and quantity is ascertained by a comparison of invoice weights with the sale weights, or by separating the sound packages and finding their mean or average weight, &c.; and then having calculated what the damaged packages should have weighed, comparing it with the actual weight rendered by the damaged packages, by which process the loss, as far as weight is concerned, is discoverable.

The depreciation in quality or condition, must be found by testing the price which can be obtained for the goods in their damaged and imperfect condition with what other goods of similar original quality produced, or by the price which skilled persons, such as Brokers and Merchants, state they would have realized if sound.

If the sound price be certified by a Broker or Merchant, it must be the price of the day on which the damaged is sold, and in the same market—and if the sound price is ascertained by observation of actual sales of sound in the same

place and on the same day, with the damaged, regard must be had that the *quality* is the same in both cases, and that the conditions of each sale as to discount or credit, are similar.

In most places, damaged goods are sold by auction, and sales by auction are almost invariably made for cash; whilst sound sales and estimates of sound price are nearly always at a credit. Therefore, in ascertaining the value for adjustment, both prices must be placed on the same footing; both must be either for credit or for cash.

It is not usual where sea-damage exists in part of a cargo, the whole of which had been previously sold to *arrive*, to assume the *agreed price* for sound value, and the *actual sale* of the damaged goods after the ship's arrival, for their value in their depreciated condition: a valuation must be given of their price on the day on which the damaged goods were sold.

When the relative difference between sound and damaged is ascertained, it is next to be applied to the sum insured. It is not the actual amount of difference between sound and damaged, that the underwriters are necessarily liable for, but the *proportion* or ratio. Thus, suppose \$80 is insured on a package of goods, the sound value of which proves to be \$100, and which sells in its damaged condition for \$80, the actual difference is \$20, or 20 per cent. loss. But the underwriters have not received a premium on \$100, but on \$80 only, the sum at which the package was mutually agreed to be valued at in the policy. They cannot, therefore, be made to pay the whole \$20, but they will pay 20 per cent. on the amount they have insured, viz., on \$80, which is equal to \$16. And, conversely, if the goods are insured for \$80, their sound market price \$60, their sale \$40; the actual difference is \$20, or 33 $\frac{1}{3}$  per cent. The underwriters having insured more than the actual value, are liable for the ascertained proportion of damage, and must pay 33 $\frac{1}{3}$  per cent. on \$80, or a sum of \$26 66 $\frac{2}{3}$ .

But it is not often that the insured value exceeds the sound value. A shipper usually insures the invoice cost of the goods; to which is added all charges until the goods are on

board the ship, the premium of insurance, also a reasonable per centage of expected profit, say 10 per cent.

Having stated in what form a claim for damage on goods is to be made, the next point to be looked at, is, whether *gross* or *net* proceeds are to be taken. The reason why the *net* proceeds are not taken against a *net* sound value in fixing the amount of damage, is this, that underwriters are not liable for any loss which may be the consequence of the duties or charges to be paid after the arrival of the commodity at the place of destination. And it has been held by the courts, and adopted in practice, that the calculation is to be made on the difference between the respective *gross proceeds* of the same goods when sound and when damaged, and not on the *net* proceeds. And a further reason for adopting this rule, is, that by taking the *net* proceeds as the basis, instead of the *gross*, it will happen that when equal charges are to be paid on the sound and damaged article, the underwriter will be affected by the fluctuation of the market, which ought not to be.

*On the following page, will be found an example in figures, of an adjustment of particular average on goods.*

Common form of adjustment of particular average:

*250 packages of Tea were insured from Amoy, China, to New York, for \$2,568.*

*On arrival in New York, 104 packages were found damaged, and sold at auction. Invoice weight, 5,400 lbs.*

|   |                   |
|---|-------------------|
| <i>Sound value at 6 months, 20 cents,</i>   | <i>\$1,080 00</i> |
| <i>Less, 3½ per cent. discount for cash,</i>  | <i>37 80</i>      |
| <hr/>   | <hr/>             |
| <i>Cash Sound Value,</i>  | <i>\$1,042 20</i> |
| <i>Being damaged, produced gross, cash,</i>   | <i>888 20</i>     |
| <hr/>   | <hr/>             |
| <i>The difference,</i>  | <i>\$204 00</i>   |
| <i>is equal to 19<sup>57½</sup><sub>10,000</sub> per cent.</i>                          | <hr/>             |
| <i>The Insured Value of 104 packages, is</i>  | <i>\$1,047 84</i> |
| <hr/>   | <hr/>             |
| <i>Which at 19<sup>57½</sup><sub>10,000</sub> per cent., would lose</i>                 | <i>\$205 01</i>   |
| <i>Equal to 7<sup>57½</sup><sub>100</sub> per cent.*</i>                                |                   |
| <hr/>   |                   |
| <i>To which, add auction charges, port wardens' fees, copy<br/>of protest, &amp;c.,</i> | <i>26 94</i>      |
| <hr/>   |                   |
| <i>Claim on Underwriters,</i>   | <i>\$281 95</i>   |
| <hr/>   |                   |

In case of particular average or damage to cargo, it will greatly facilitate the owners in their settlement with the underwriters, to have the sound value certified by the agent of the

\*Note.—If insured "free of particular average under 3 per cent.," there is no claim, although the expenses of ascertaining the loss added thereto, should cause the amount to exceed the required percentage.

Tea is usually insured in lots of \$6,000, and the loss of a part, to constitute a claim, must amount to 5 per cent., or \$300, or there will be no claim under the policy.

In settling losses under the memorandum in the policy, which declares articles free of average under say five per cent., if a partial loss to an article be found, on survey and sale, to have been five per cent., the insurer pays the damages and the expenses. If under five per cent., he pays nothing, and the insured bears the expenses. The expenses are like costs of suit, and fall upon the losing party. The expenses are not taken to make up the five per cent. Note to 2d Ed.

insurers. And when it is necessary to appoint surveyors, reliable persons, and those acquainted with the goods which they are to inspect, should be had; and the underwriters' agent should be consulted as to the proper persons, and he should also be invited to be present at the holding of such survey. An important object of the underwriters in desiring to have their agent present, is to prevent the wholesale condemnation of goods, which too frequently happens, where the surveyors are appointed by the consignee. Surveyors are not always judicious nor always disinterested; on the contrary, it too frequently happens, that they have interests directly opposed to those of the underwriters.

It is highly desirable, in justice to the underwriters, that only the damaged goods should be sold, the sound portion being selected from them.

## CHAPTER VI.

### INSURABLE INTEREST.

*What is the meaning of the words "insurable interest"?*

The interest which it is necessary for every one to have, before he can effect an available insurance on his own account or for his own benefit, is called an *insurable interest*.

*Is it not essential to every contract of insurance, that the assured has an interest at risk?*

The assured must have an interest in the subject of insurance; and this interest must be at risk.

If he has no interest, or if his interest is not at risk, he can be liable to no loss, and accordingly there is nothing, against which the underwriter can agree to indemnify him.

As insurance is essentially a contract of indemnity, the insurer can be called upon only to make good a loss sustained.

*What kind of interest may be insured?*

It is not essential that the thing to which insurance relates,

or the interest of the assured, should be a species of property subject to possession, or that the interest should be that of absolute ownership.

Interest does not necessarily imply a right to the whole, or a part of a thing, nor necessarily or exclusively that which may be the subject of privation, but the having some relation to, or concern in, the subject of insurance, which relation or concern, by the happening of the perils insured against, may be so affected as to produce a damage, detriment or prejudice to the person insuring.

The interest may be absolute or contingent, legal or equitable. It may exist in the assured not only as absolute owner, but also in the character of mortgagor or mortgagee, borrower or lender, consignee, factor or agent, and may arise from profits, freight or commission, or other lawful business.

In order to constitute an insurable interest against any peril, it must be such an interest that the peril may have a direct effect upon it, instead of a remote, circuitous, consequential effect. That is to say, the interest must be a direct one, in reference to the perils insured against. Phil. on Ins., vol. 1,175.

*In order to entitle the assured to recover on the policy, is it necessary that the interest, in respect of which the insurance is effected, was an interest subsisting at the time of the loss?*

It is; but it is not necessary that the interest be subsisting at the time of effecting the policy. Lane v. Marine Mutual F. Ins. Co. 12, Maine, 44.

*Can the assured, who has been interested during the risk, but has parted with his interest before loss, recover on the policy?*

He cannot.

*But if he have not parted with his interest till after loss, can he recover?*

He can.

*Has a person who pays for repairing a vessel, by force of that fact, an insurable interest in her?*

He has not. The repairs become a part of the vessel, and having no lien for the money expended, he has no insurable interest. Buchanan v. Ocean Ins. Co., 6 Cowen, N. Y., Rep. 818.

Advances for repairs of a ship give no insurable interest in it, unless when secured by a lien by law or contract.

*Has a creditor, merely as such, any insurable interest in the property of his debtor?*

He has not.

*What is the rule as to insurable interest in profits or commissions?*

The rule has been adopted by the Supreme Court of the United States, that the fact of being interested in the profits constitutes an insurable interest, without proof that there would

have been a profit had the voyage not been interrupted by the perils insured against. Patapsco Ins. Co. v. Coulter, 8 Peters' S. C. R. 222. Commissions as to their insurability, stand on the same ground as profits.\*

*Has the lender on bottomry an insurable interest in the safety of the ship?*

Where money is lent on bottomry, it is understood that if the ship is lost, the lender loses also his whole money; but if the ship arrive in safety, then he receives back the principal, and also the premium or maritime interest agreed upon, however much it may exceed the legal rate of interest. There is greater reason, therefore, why the lender on bottomry should have an insurable interest in the thing pledged, than that a mortgagee should have such an interest; for, if the property is lost, he loses his debt, whereas a mortgagee still has his claim subsisting against his debtor. It has always been held that the lender has an insurable interest in the ship or goods hypothecated.

But the insurable interest of a party to whom property is hypothecated will depend upon the validity of the hypothecation.

*Has the borrower on bottomry an insurable interest in the safety of the ship?*

The *borrower* on bottomry and respondentia, has no insurable interest, except in the surplus by which the value of the hypothecated property exceeds the amount of the loan.

If, therefore, goods are hypothecated for the full value, the

\* Expected profit on a maritime adventure, is an ordinary subject of insurance. *Phillips on Ins.* vol. 1, § 181 and 315; *Arnowd on Ins.*, vol 1, 205.

Insurance on profits is usually made by a valuation.

In the United States it is frequently agreed by the parties that the adjustment of the loss on profits or commissions shall correspond to that on goods on which the profits or commissions are to accrue. But without any such express agreement, the adjustment of a particular average on profits or commissions on goods damaged, or a part of which are lost by the perils against which the profits or commissions are insured, is at the same rate per centum as that on goods.

In a policy upon the profit of goods, the insurer undertakes that they shall not be prevented by the perils insured against, from arrival at a certain market. If a part of the goods only are prevented from arriving, it constitutes a partial loss upon this interest.

borrower is not interested in their safety, as far as the risks are assumed by the lender; for if they are lost by the risks, within the hypothecation, he is discharged from the debt. He is accordingly interested only so far as the value of the property exceeds the amount for which it is pledged.

For instance, if a ship valued at \$20,000, be hypothecated for the sum of \$15,000, then the lender may procure insurance on her for the last mentioned sum, and the borrower, or owner of the ship, can only procure insurance for the surplus value of the same, to wit, the sum of \$5,000.

#### *Have Consignees, Factors, or Agents, an insurable interest?*

A consignee, factor or agent, having a lien on goods, to the amount of his advances, acceptances and liabilities, stands in this respect precisely in the situation of a mortgagee.

A debt is due to him from his principal, for which he holds the property as collateral security, and the property is at the risk of the principal, as the debt would still subsist, though the property should be lost; and the excess over the proceeds of the goods would be still due to him, in case of the proceeds being insufficient to satisfy his claim. He has therefore an insurable interest in the goods to the amount of his lien. Phillips on Ins. vol. 1, 309. Van Natta v. Mut. Security Ins. Co. 2 Sandford, 490.

There are different kinds of consignees; some have a power to sell, manage and dispose of the property, subject only to the rights of the consignor; others have a mere naked right to take possession; and others, though not intrusted to sell, are yet interested in the property, as having a lien or claim upon it for their advances. The rights of these different kinds of consignees to effect an insurance, must vary with the various relations in which they stand to the property and to the consignor.

In the adjustment of loss on a policy on profits, it is not necessary to show what the profits would have been if the loss had not happened. It is sufficient to show interest in the cargo, and the loss thereof. The loss of the cargo carries with it the loss of the profits, either in whole or in part, as the case may be. If the cargo be totally lost, the loss on the policy on profits is total. If partial

"Mere naked consignees," says Mr. Arnould, "not intrusted to sell, nor having a lien for advances, have no insurable interest so as to enable them to insure in their own names, and on their own account, though they may, under certain circumstances, insure *on account of the consignor*, without orders from him to that effect," and he adds "but consignees having a lien, or indorsees of the bill of lading, to whom a general balance is due, have an insurable interest to the extent of their claim."

A commission merchant, to whom goods are consigned for sale, has an insurable interest to the amount of his commissions on the sale, from the time of the goods being consigned to him. He may make insurance in anticipation of the consignment being made, and the goods becoming subject to the risks insured against. Putnam v. Mercantile Marine Ins. Co., 5. Metc. 386. Mr. Justice Hubbard, in delivering the opinion of the court, said "the law of insurance has been most reasonably extended to embrace within its provisions, cases where the parties, having no ownership of the property, have a lien upon it, or such an interest connected with its safety and its situation, as will cause them to sustain a direct loss from its destruction or from its not reaching its proper place of destination. Such rights have received protection, and the expectation of profits, the loan upon mortgage or respondentia, the advances of a consignee, an agent or factor, and the commissions of a master or supercargo, are all now well recognized subjects of insurance."

*Has the master of a vessel, in his character as master, any insurable interest in the ship, cargo or freight?*

The master of a vessel, is merely a carrier, and in his capacity of master merely, has no general insurable interest in the ship, cargo, or freight. Barker v. Marine Ins. Co., 2 Mason's R. 369.

A master, however, may insure his commissions, his wages, on the cargo, it is partial on the profits, and to the same extent. The *salvage* on what is saved of the cargo is credited to the insurer on profits as well as to the insurer on cargo. They stand on the same footing precisely. In some of the New York policies this principle is specially recognized by the introduction of the clause in policies on profits, that the policy is subject to the same average and benefit as salvage as cargo. Note to 2d Ed.

or the freight of goods carried by him on his privilege. Holbrook v. Brown, 2 Mass., 280. Foster v. Hoyt, 2 Johns Cas. 327.

If the master sails the vessel on shares, he has an insurable interest in the freight to the amount of his share, and his indebtedness on account of the freight in addition. Haines v. Rowe, 40 Maine, 181.

*Has the charterer of a ship an insurable interest?*

If the charterer of a ship contracts to pay the owner for the ship, in case of loss, he has an insurable interest in her, and may effect insurance upon her in his own name. Bartlett v. Walter, 13 Mass., R. 267.

*What is the insurable interest of Mortgagor and Mortgagee?*

The mortgagor has clearly an insurable interest in the mortgaged property, and that to its full value; for in case of loss he would not only be deprived of the thing insured, but be compelled also to pay the mortgage debt. Alston v. Campbell, 4 Brown, P. C. 476; Locke v. North American Ins. Co., 18 Mass. 61; Hibbert v. Carter, 1 T. R. 745; Lazarus v. Commonwealth Ins. Co., 19 Pick. 81; Higginson v. Dall, 13 Mass., 96.

A mortgagee has insurable interest in the mortgaged property to the amount of his claim. Traders' Ins. Co. v. Robert, 9 Wend, 404; Carpenter v. Washington Ins. Co. of Providence, 16 Peters' Ct. R. 496. 4 Howard's Sup. Ct. R. 185.

Where a mortgagee, or one having a lien, insures his own interest in property, a payment of a loss to him by the insurers does not discharge the debt, for which the mortgage or lien is the security. The want of privity between the mortgagor and the insurers is a conclusive objection to the mortgagor's claim

to such discharge. *Aetna Fire Ins. Co. v. Tyler*, 16 Wend. 385, 397.

Where the mortgagee insures solely on his own account, it is but an insurance of his debt; and if his debt is afterwards paid or extinguished, the policy ceases from that time to have any operation; and even if the premises insured are subsequently destroyed by fire, he has no right to recover for the loss, for he sustains no damage thereby. *Carpenter v. Providence Washington Ins. Co.*, 16 Peters' 495, 501.

Where the mortgagee is trustee for the mortgagor, or where the mortgagor causes insurance to be made on the premises payable to the mortgagee in case of loss, or where the mortgagee effects insurance at the expense of the mortgagor with his consent, payment by the insurers would go in discharge of the debt. *King v. State Mut. F. Ins. Co.*, 7 Cush. 1, 4.

A payment by the insurers to a mortgagee for damage to the mortgaged premises by fire, under a policy originally made in favor of the mortgagor, and by him assigned to the mortgagee, as collateral security for the debt, is so far satisfaction of the debt. *Robert v. Traders' Ins. Co.*, 17 Wend. 631.

As the mortgagee's motive in insuring is to preserve his security, and as the insurance must be construed to be made with express reference to the mortgage interest, whether specified or not; a question arises whether upon the happening of loss, and payment thereof to the mortgagee (he having insured for his own benefit, and paid the premium out of his own funds), the insurers can demand from him a transfer of the mortgaged debt? The legal rights of the insurers and the assurers in this respect have not been satisfactorily defined by the courts, as will be found on reference to the decisions above cited. But I think, that, whether the interest is specified or not, the insurers upon the payment of loss, are entitled to have secured to them, the debt of the mortgagor, or some portion of it corresponding to the amount insured. And until this question receives clear and final adjudication from the courts, it is desirable, to avoid litigation, that the assured, by a special clause in

the policy, be held bound, in case of loss and payment thereof, to transfer the mortgage debt to the insurers. The engagement of the insurers is merely to stand in the place of the assured, and to incur the same risks as he is incurring. The whole law of insurance is *indemnity*, one of the principles of which is, that insurers who pay a total loss are subrogated to all the rights, interests and claims of the assured, in or about the interest insured. And all the ends of indemnity can be best gained if the assured is held bound to transfer the mortgage debt to the insurers. *King v. State Mut. F. Ins. Co.*, 7 *Cush.* 1, per *Shaw*, C. J. *Carpenter v. Prov. Wash. Ins. Co.*, 16 *Peters'* 495, 501, per Mr. Justice *Story*. *Etna Ins. Co. v. Tyler*, 16 *Wend.* 385, 397. *Kernochan v. New York Bowery F. Ins. Co.*, 5 *Duer* 1, 17 N. Y., 428.

The following clause is very frequently inserted in fire policies on mortgaged property, viz.: "It is agreed, that whenever the company shall pay the mortgagee any sum for loss under said policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, it shall at once be legally subrogated to all the rights of the mortgagee under all the securities held as collateral to the mortgage debt, to the extent of such payment, or, at its option, may pay to the mortgagee the whole principle due, or to grow due on the mortgage, with interest, and shall thereupon receive a full assignment and transfer of the mortgage and all other securities held as collateral to the mortgage debt; but no such subrogation shall impair the right of the mortgagee to recover the full amount of his claim."

## CHAPTER VII.

### OF PRIOR INSURANCE, DOUBLE INSURANCE AND RE- INSURANCE.

The marine policies of this country, usually contain a clause, to the effect, that "if the assured has made any other insurance upon the subject insured, prior in date, the underwriters shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property."

Under this provision, the amount of interest, in respect to a subsequent policy against the same risks, is the excess of the value over the amount insured by the previous policies; i. e., a second policy insures only the uninsured excess of interest remaining after the first; the third policy the same excess remaining after the second; and so on.

The different underwriters are by this provision made securities for each other; and the assured, by getting insurance on property already insured, in fact gets insurance on his insurer.

Under this clause, the usage in New York, appears to be, that where there are two or more policies on the same cargo and risk, of different dates, and interest to supply them all, if a partial loss takes place while all the goods are on board, the several policies contribute in proportion to the sum insured by each policy. Am. Ins. Co. v. Griswold, 14 Wend. 399.

In *Kent v. Manufacturers' Ins. Co.*, 18 Pick. 21, Mr. Justice Putnam said:—"The clause in relation to prior policies is not intended to prevent the owner from procuring subsequent policies upon the same vessel. It is not introduced for the purpose of rendering the subsequent policies null and void. On the contrary, it supposes that they may be lawfully made; and the clause regulates the extent of the liability which the underwriters upon the subsequent policies incur. If, for example, the subsequent policy covers the same vessel, voyage and risks, as were covered by the prior policy, the assured would not by the terms of the contract be entitled to recover any thing upon the subsequent policy. Such was the case of *Seamans v. Loring*, 1 Mason 127. But if part of the voyage was protected by the prior policy, and the second policy should in terms embrace the whole voyage, the underwriters upon the second policy would be liable for the loss sustained in that part of the voyage not covered by the first policy."

If the subsequent policy contain no provision in respect to prior insurance, the assured may insure with different underwriters to any amount, if he will pay the premiums, and recover indemnity from any of the underwriters whom he may elect to sue. But the assured can recover only the real amount of his loss, to which all the underwriters shall contribute in proportion to their several subscriptions. *Lucas v. Jeff. Ins. Co.*, & Cowen 635.

Where there is the usual clause respecting prior insurance, it does not apply if the policies are simultaneous; for in that case all are liable, but *pro rata*. 2 Mason 475. 18 Pick. 145. They are held to be simultaneous, if, as is sometimes done, the policies so state; or if they bear date the same day, and there is no evidence of any difference in the time of their making. But although dated and made on the same day, if they are not declared to be simultaneous, it may be shown by evidence that one was made before the other, and they are then not simultaneous. 2 Mason 475.

Under the head of *valued policies*, we have already examined

the effect of valuation in the policy, in ascertaining the amount to which a second or subsequent policy is applicable.

There is no double insurance, or over-insurance, unless all the policies insure the very same subject-matter, against the same risks, and the whole amount insured exceeds the value of the whole subject-matter. *Perkins v. N. Eng. Mar. Ins. Co.*, 12 Mass. 214, 218. *Howard Ins. Co. v. Scribner*, 5 Hill, 298.

A double insurance is a totally different thing from a re-insurance. The latter is effected by the underwriter to secure himself from having to pay a loss. Mr. Phillips, in his valuable treatise on Insurance, vol. 1, page 207, defines re-insurance to be "a contract whereby one party, called the 're-insurer'; in consideration of a premium paid to him, agrees to indemnify the other against the risk assumed by the latter, by a policy in favor of a third party."

Every insurer has an insurable interest for re-insurance. The re-insurance may be against all or a part of the risks that have been assumed by the re-insured in the original policy in which he is the insurer.

An underwriter, by subscribing a policy, acquires no property in the subject insured, yet he acquires an insurable interest, and, having rendered himself directly liable to loss from certain perils, may stipulate to be indemnified against those perils. His interest, however, exists only in relation to the perils against which he has insured in the original policy.

## CHAPTER VIII.

### OF REPRESENTATION AND CONCEALMENT.

*What is understood by the term representation, as it relates to a policy of insurance?*

A representation in insurance is the communication of a fact, or the making of a statement, by one of the parties to a contract of insurance to the other, in reference to a proposal for their entering into the contract, tending to influence his estimate of the character and degree of the risk to be insured against. Phillips on Ins. 524.

Mr. C. J. Marshall, in Livingston v. Maryland Ins. Co., 7 Cranch. 535, says: "To constitute a representation, there should be an affirmation or denial of some fact, or an allegation which plainly leads the mind to an inference of a fact."

Mr. Arnould states a representation, in the technical sense which the word bears in the law of insurance, to be:—"A verbal or written statement made by the assured to the underwriter, before the subscription of the policy as to the existence of some fact or state of facts, tending to induce the underwriter more readily to assume the risk, by diminishing the estimate he would otherwise have formed of it."

A fact or statement having such tendency is called a *material*

fact or statement. One having no such tendency is called *immaterial*.

If either party, whether by design, or through negligence, mistake, or oversight, conceals, or misrepresents a fact material to the risk, the contract is void with respect to the other party. But the misrepresentation or concealment must be of a fact material to the very risk or risks insured against, to work an avoidance of the policy.

A representation made to an underwriter must be true, or he is discharged; and if the assured represents facts without knowing the truth, he takes the risk upon himself.

If the assured, or his broker, omits to state a material circumstance, supposing it not to be material, this discharges the underwriter.

If an underwriter insures a vessel that he knows to have arrived, the policy is void.

The representations ought to be reduced to writing, and signed by the parties. If an insurance broker makes representations that he ought not to have made, he is liable for the damages that may ensue therefrom to his principal.

Where there is a misrepresentation, the insurance is for all purposes null and void, and not voidable only. *Clark v. New England Mut. F. Ins. Co.*, 6 Cush. 342.

If the assured states a mere expectation or opinion, or expresses himself in a qualified or doubtful manner, yet at the same time fairly, but without any absolute assertion of a fact, it is not a representation, and does not avoid the policy. *2 Duer on Ins.* 644.

It is a misrepresentation under the law of insurance, when it is false, whether intentionally so or not, and tends to obtain for the party uttering it some advantage in the bargain, or an entering into the bargain by the other party. And it has the same effect whether made in reference to a matter concerning which some representation is necessary or otherwise. *Sawyer v. Coasters' Mut. Ins. Co.*, 6 Gray 221.

*What is the general rule as to what facts are necessary to be disclosed in a representation?*

That it is the duty of the assured to communicate every species of intelligence which he possesses, which may effect the mind of the insurer, either as to the point whether he will insure at all, or as to the rate of premium.

The contract of insurance is one of mutual good faith; and the principles which govern it are those of an enlightened moral policy. The underwriter must be presumed to act upon the belief that the party procuring insurance is not at the time in possession of any fact material to the risk, which he does not disclose; and that no known loss had occurred, which by reasonable diligence might have been communicated to him. McLaughlin v. The Universal Ins. Co., 1 Peters' S. C. R. 185.

The assured is not required to represent facts of general notoriety, or which are presumed to be known to those conversant with the trade; but he is required to state fairly and fully other facts within his knowledge that are *material* to the risk. If a knowledge of the circumstances suppressed would have induced the insurer to demand a higher premium, or to refuse to underwrite, it will invalidate the policy.

The usages of trade need not be stated, since those, the underwriter is presumed to know.

If, after giving instructions for effecting a policy, the person who has given the instructions receives intelligence *material* to the risk, he must immediately disclose it, or countermand his instructions.

If the vessel is known to be out of time, the circumstance must be stated to the underwriters.

If the time of sailing be incorrectly stated, so as to make the underwriters believe that the vessel is not out of time, when in fact she is out of time, the policy will not bind them.

One of the tests, and certainly a decisive test, whether a misrepresentation or concealment is material to the risk, is to ascertain whether, if the true state of the property or title had

been known, it would have enhanced the premium. If it would, then the misrepresentation or concealment is fatal to the policy. *Columbian Ins. Co. v. Lawrence*, 1 Peters' S. C. Rep. 516.

*What is understood by the term concealment, as it relates to a policy of insurance.*

Concealment in the law of insurance, is the suppression of a material fact unknown to the other party, which refers to the pending bargain, and is material to its terms. *Maryland Ins. Co. v. Ruden*, C. Cranch. 338. *Hurtin v. Phoenix Ins. Co.*, 1 Wash. C. C. 400.

In marine insurance, the misrepresentation or concealment by the assured of a fact material to the risk, will avoid the policy, although no fraud was intended. *Burritt v. Saratoga M. F. Ins. Co.*, 5 Hill 188. *Curry v. Commonwealth Ins. Co.*, 10 Pick. 585. *Sawyer v. Coasters' Mut. Ins. Co.*, 6 Gray 221.

In *Clason v. Smith*, 3 Wash. C. C. 156, *Washington*, J., said: "A misrepresentation to avoid a policy must not only be false, but it must be material either in relation to the rate of premium, or as offering a false inducement to the underwriter to take the risk at all, when otherwise perhaps he would not have done it. If, in point of fact, it had no influence, nor ought to have had any in these respects, it is impossible to say that it was material."

If the representation is true at the time it is made, subsequent events not caused by the misconduct of the assured, will not, generally, discharge the underwriter.

Intelligence and rumored facts are equally material to be represented, and a suppression or misrepresentation of them will equally defeat the contract, though it turns out that they were erroneous, and that there did not really exist any circumstance

tending directly to determine the insurer to decline the risk or demand a higher premium. Phillips on Ins. 538.

A false statement, made knowingly by the assured, in answer to inquiries of the underwriter, is conclusively presumed to be material. Burritt v. Saratoga Mut. Fire Ins. Co., 5 Hill 188. Dennison v. Thomaston Mut. Ins. Co., 20 Maine 125.

All intelligence ought to be communicated to the underwriter which may affect his judgment, either: 1st, as to the point whether he will insure at all; 2d, as to the point at what premium he will insure; and this duty attaches at the time of effecting the policy. Consequently, though the intelligence concealed may turn out to be unfounded, or the loss may arise from a cause totally unconnected with the fact concealed, the policy will nevertheless be void. Lynch v. Hamilton, 3 Taunt. 37, 44.

But the assured is bound to disclose only facts, or intelligence, and not a mere opinion, or hope or fear of his own, which does not rest upon some definite fact or ground. Bell v. Bell, 2 Camp. 475.

The principle which must be clearly apprehended and remembered upon the subject is, that every thing material must be disclosed, and stated truly; and that to determine whether any fact, actual or rumored, is material, we must ascertain whether that fact would naturally and reasonably enter into the estimate of risk, or the reasons for or against entering into the contract of insurance. The whole object of the rules as to representation, misrepresentation, and concealment, is to enable the insurers to judge accurately of the risk they undertake.

## **CHAPTER IX.**

### **OF WARRANTIES.**

*How is a warranty of a policy of insurance regarded in law?*

As a condition precedent, that is, a stipulation upon the strict compliance or non-compliance with which the validity of the policy depends. No substantial compliance with the warranty, or performance of an equivalent act, will avail the insured, or render the underwriter liable, if the express terms of the contract be infringed.

*Of what two kinds are warranties?*

Either express or implied. An express warranty must be reduced into writing, and forms a part of the policy itself; an implied warranty is that which results by mere operation of law from the relative character and situation of the assured and underwriter. Thus a warranty inserted in the policy, that the ship is neutral property, is an express warranty; a warranty that the ship is seaworthy, is implied; that is, annexed to every policy by application of law, without any express stipulation.

*Of Express Warranties generally—their Form, Construction, and Mode of Fulfilment.*

An express warranty is a stipulation inserted in writing on the face of the policy, on the literal truth or fulfilment of which the validity of the entire contract depends. 3 Kent. 5th ed. 288.

An express warranty or condition is always a part of the policy, but, like any other part of the express contract, may be written in the margin, or contained in proposals or documents expressly referred to in the policy, and so made a part of it. Phillips on Ins. 756.

A warranty is often made by saying expressly in the policy, that the assured *warrants* such a fact. But a formal expression of this sort is not requisite to constitute a warranty. Any direct or even incidental allegation of a fact relating to the risk, has been held to constitute a warranty.

A *warranty* differs from a *representation* in that, the former must be strictly and literally complied with; whereas it is sufficient that the latter is complied with equitably and substantially. It is held that the intention of the parties in a warranty, except as to the meaning of the words used, is not to be inquired into; the insured has chosen to rest his claims against the underwriters on a condition inserted in the contract, and whether the fact or engagement which is the subject of the warranty be material to the risk or not, still he must bring himself strictly within that condition.

A non-compliance with a warranty, though it occasions no damage, and does not change or increase the risk, has the effect of discharging the underwriters from their liability.

As any statement of a fact in the policy is a warranty, though neither the word *warrant*, nor any formal expression of like import is used; so there is frequently a warranty in form of expression, where there is none in fact. The assured often "warrants" the property "free from average," "detention," or "capture," or from other losses and perils, which is no more than an agreement that those shall not be among the perils and losses

insured against, and for which the underwriter is to be liable. Although these forms of expression are sometimes spoken of as warranties, it would be absurd to consider them such in their character and construction, since, in the case of an insurance "free from average," for instance, it would be adopting the doctrine that the occurrence of an average loss would render the policy void. Phillips on Ins. 760.

A stipulation in a policy upon a ship, that the insurers are not to be "liable to any damage to or from her sheathing," was held, in Massachusetts, not to be a warranty that the ship was sheathed or should be kept so, but merely an exoneration of the insurers from all loss and damage to or on account of the sheathing. Martin v. Fishing Ins. Co., 20 Pick. 389.

If the warranty is of a fact that is not to occur until after the commencement of the risk, and the loss occur before the warranty is complied with, it is no breach which discharges the insurers, nor is it such a breach, if a compliance with the warranty was legal when it was made, but becomes illegal afterwards; for the law never requires that an illegal act should be done. Parsons on Maritime Law, vol. 2, page 108. Phillips on Ins. 771. Hendricks v. Com. Ins. Co., 8 Johns 1. Taylor v. Lowell, 3 Mass. 331, 347; and see Arnould on Ins. 583.

*The warranties that most frequently occur in policies of insurance, are 1st, Warranty of Ownership; 2d, Warranty of neutrality; 3d, Warranty of the time of sailing; 4th, Warranty to sail with convoy; 5th, Particular warranties and stipulations;—and we will consider them in their order.*

#### *1st. Of the Warranty of Ownership.*

The insurers have the right of personal selection; they may be willing to insure for one person and not for another; and therefore the usual clause, that the policy shall be void if as-

signed without their consent, is certainly valid, whatever may be the right of transfer in the absence of this clause.

*2d. Of the Warranty of Neutrality.*

The most usual cause of requiring a warranty of ownership, occurs where this is done in order to make it certain that the property is neutral, or at least to prevent the underwriters from assuming any risk arising from the belligerent character of the property.

A warranty that the ship or goods are neutral or neutral property, is an engagement on the part of the assured, that it is owned by persons resident in a country at peace when the risk begins, and who have the commercial character of subjects of such country, and that it shall be accompanied with such documents, and shall be so managed and conducted by the assured and their agents, as to be entitled, as far as depends on them, to all the protection and privileges of property belonging to the subjects of such country. Phillips on Ins. 783.

Under this warranty, the cargo must be accompanied by proof of its national character; the invoices, bills of lading, the letters relating to the goods, and the certificates of consuls or other officers, must all be consistent with, and confirm, the warranty. Griffith v. Ins. Co. of North America, 5 Binn. 464.

If the neutral or national character of the property be not expressly warranted, but some fact is warranted, or so asserted as to amount to a warranty, and this fact, if true, would necessarily imply the neutrality of the property, then that neutrality is warranted. Walton v. Bethune, 2 Brev. 453.

As the warranty of neutrality of property requires actual neutral ownership, and proper proof of this, so it requires such trade, conduct, and course of transaction as shall be in conformity and adaptation to this warranty. And, therefore, if the

neutral interests or property are undistinguishably mixed up with belligerent interests or property, they become liable themselves to all the incidents and effects of a belligerent character. Parsons on Maritime Law, vol 2, p. 116.

In respect to contraband goods, the general doctrine of Prize Courts is, that they are liable to capture and condemnation when found on board a neutral ship; but they do not affect other innocent goods found on board, unless they belong to the same owner. If they do so belong, they also are liable to confiscation. 1 Rob. 26. So, if the ship belong to the same owner as the contraband goods, she is also liable to confiscation. 3 Rob. 295.

The law of nations in respect to neutrality is controlled to a considerable extent by treaties, between different countries, the terms and provisions of which must be strictly complied with.

As to what articles are contraband, and what particular acts, trade, etc., is held by belligerents to be unlawful; the reader is referred to Chitty on the Law of Nations, and Wheaton on Captures.

### *3d. Warranty of the time of Sailing.*

Probably one of the most important of all express warranties, is that which either alleges that the ship has sailed, or that she will sail on, before, or after a given day.

A vessel *has sailed*, the moment she weighs anchor or casts off her fastenings and gets under way, in complete preparation for the voyage, with the purpose of proceeding to sea, without further delay at the port of departure.

The ship must be actually moving, with the intention of prosecuting her voyage.

A warranty to sail on or before a particular day is not complied with by leaving the harbor on that day, without having

a sufficient crew on board, although the remainder of the crew are engaged, and ready to come on board. *Pettegrew v. Principle*, 3 B. & Ad. 514.

If the ship has broken ground on her sea voyage, and once got fairly under sail for her place of destination, though she may have gone only a little way, and she afterwards put back from stress of weather, or is in any way afterwards detained, yet, as there will have been a beginning to sail on the voyage insured, the warranty will be held to have been complied with. *Boven v. Hope Ins. Co.*, 20 Pick. 275. *Union Ins. Co. v. Tysen*, 3 Hill 118.

It is a disputed question, whether, if a vessel is warranted to sail on or before a day named, and is completely ready to sail on that day, but is prevented from starting by stress of weather or other extraordinary inevitable peril or restraint, not excepted in the policy, and afterwards sails without unnecessary delay, the warranty is complied with.

Mr. Phillips, in his valuable treatise on Insurance, page 440, after citing numerous decisions, which do not altogether harmonize, expresses his own opinion, which seems to us the correct one, that "if the risk has previously commenced under the policy, and the vessel is wholly ready to depart by the time warranted, so far as the fitting out, loading, manning and clearing out, and all other preparations and preliminaries to the actual departure, depending upon the assured, are fully completed and nothing hinders her sailing but some peril insured against by the policy, or which, if it had occurred at any subsequent stage of the voyage would not have discharged the underwriter, the warranty to sail is complied with, unless a different construction is expressly indicated by the policy. But if the risk is to commence only at the sailing of the ship, and the assured is responsible for, and the underwriter free from, all preceding risks, perils and losses, then the warranty is not complied with unless she actually sails within the time warranted."

*4th. Warranty to Sail with Convoy.*

A warranty to sail or depart with convoy, is understood to mean that the ship shall sail with the convoy appointed by government for the voyage; and, if convoy is usually furnished for only a part of the voyage, it is no breach of the warranty to perform the remainder without any convoy.

It is generally necessary to obtain sailing orders, because without them the master cannot answer signals, or know the place of rendezvous in case of a storm, and he does not in effect put himself under the protection of the convoy, and therefore the underwriters are not benefited.

If a vessel neglects to obey sailing orders in starting, this is a breach of the warranty. Not only must a vessel sail with the convoy, but it would seem that she must start as soon as possible, and if she delays, and is lost in consequence thereof, the underwriters are exonerated, although some of the vessels started after she did. If the fleet is dispersed by a storm, the vessel assured may run immediately for her port of destination. So if she is driven back to the port of clearance, she may sail again without waiting for a convoy from that port, or joining one at another port. And it has been held, that if, after the vessel has once joined the convoy, she is separated and lost, the underwriters are liable unless the separation was caused by the wilful fault of the master. Parsons on Maritime Law, vol. 2, page 124, and cases there cited.

*5th. Particular Warranties and Stipulations.*

A great variety of warranties and stipulations are occasionally introduced into policies of insurance, which are not unfrequently the result of litigation. It is impossible to enumerate these several stipulations, or to lay down any definite

rules regarding them. It may be observed, however, that no cause, however sufficient; no motive, however good; no necessity, however irresistible, will excuse non-compliance with an express warranty; if it be not in fact complied with, though for the best reasons, the policy is void.

A warranty, like every other part of the contract, is to be construed, as to the terms it employs, according to the understanding of merchants, and does not bind the insured beyond the commercial import of the words.

## CHAPTER X.

### OF IMPLIED WARRANTIES.

*What is the definition of an implied warranty?*

An implied warranty, condition, or stipulation, is an agreement not expressed in the policy, but presumed from the fact of making insurance.

The warranties implied in every policy of insurance, are sea-worthiness, proper documentation, and not to deviate.

*What is understood by warranty of Sea-worthiness?*

There is in every policy an implied warranty that the ship is sea-worthy when the policy attaches. This means, that the vessel is competent to resist the ordinary attacks of wind and weather, and is competently equipped and manned for the voyage, with a sufficient crew, and with a sufficient means to sustain them, and with a captain of general good character and nautical skill.\*

There is nothing in the law of marine insurance more important, both with a view to the benefit of commerce and the

\* Under a clause in a policy, "if the vessel, upon a regular survey, should be thereby declared unseaworthy by reason of her being unsound or rotten, the underwriter shall not be bound to pay his subscription." A state of rottenness at any period of the voyage, is conclusive evidence of unseaworthiness at its commencement; and the determination of that fact by a regular survey, is conclusive evidence of it between the parties. *Dorr v. Pacific Ins. Co.*, 7 Wheaton's, Sup. Ct. Reps., 581.

preservation of human life, than to enforce, as far as possible, a strict compliance with this warranty; as otherwise the effect of insurance might be to render those who were protected from loss by the policy exceedingly careless about the condition of the ship, and the consequent safety of the crew.

The courts, accordingly, have held that the sea-worthiness of the ship for the voyage, when she sails, is a condition precedent to the underwriter's liability for any loss incurred in the course of the voyage. *Deshon v. Merchants' Ins. Co.*, 11 Metcalf 199, 207. *Arnould on Ins.*, vol. 1, § 248.

Any defect which may endanger the ship, though unknown to the assured, will discharge the underwriters. It is not necessary to inquire whether the owners acted honestly and fairly in the transaction; for it is well understood, that however just and honest the intentions and conduct of the owner may be, if he is mistaken in the fact, and the vessel is really not sea-worthy, the underwriters are not liable.

It is the duty of the assured to keep his vessel sea-worthy during the voyage, if it be in his power to do so. If, therefore, she is disabled at sea, though she remains covered by the policy until she reaches a port, she must leave that port, wherever it may be, in a sea-worthy condition, provided she can there be made sea-worthy.\*

The warranty of sea-worthiness, although most important among those implied by law, is not the only one. Another is, that the assured is to make a distinct and honest statement of all material circumstances attending the risk. Another, that the ship shall pursue the course of her voyage in the usual manner, without deviation or risk.

### *What is Deviation as understood in a policy of insurance?*

Deviation means a voluntary departure without necessity, or

\* If a vessel, in the course of her voyage, put into a port where repairs can be made, and afterwards sail therefrom with a defect in her bottom, produced during the voyage by the perils of the sea, and which causes her to founder, the insurers are liable for the loss, unless the captain has reasonable cause to suspect the existence of the defect when the vessel was in port, or had reasonable cause to believe that she could not proceed safely home without having the same repaired. *Pickering's Rep.* 19; 11 Pick. 227; 1 Sumner, 218; 3 Peters', 558; 3 Mass. R., 381; 3 Mass., 485. *Note to 2d Ed.*

any reasonable cause, from the regular and usual course of the specific voyage insured; or it is a varying of the voyage; and it matters not whether the risk is increased or diminished thereby, the effect in either case being the same—to terminate the responsibility of the underwriters.

It is not necessary to prove that the risk has been enhanced by the delay, or deviation. The underwriter only undertakes to indemnify the assured upon the implied condition, that the risk shall remain precisely the same as it appears to be on the face of the policy. Insurance is a contract whereby, for a stipulated premium, the underwriters agree to indemnify the assured against certain perils or risks; and that the contract may be fair between the parties, the premium must be adequate, or in due proportion to the risks. But this would be impossible, unless the risks can be to a certain extent known beforehand, and therefore estimated. If the insurance is upon a voyage, it must be distinctly stated; and its course and termini being known, the underwriters may then judge of the risks to be encountered on that voyage. It is, therefore, always presumed that the voyage is to be pursued in the most direct and safe course, and the adventure conducted, in general, in the most expeditious manner as far as is consistent with safety; and if there be any departure from such course or mode of conducting the adventure, whereby the risks insured against are varied or increased, the assured must justify such departure, by showing either a usage in that respect, or a reasonable necessity.

In practice, a slight change, which does not increase the risk, is not considered a deviation. The rule is this, if the customary course of ships on that particular voyage, has been so long established and so well known, that the underwriters are justified in calculating upon that course, as the one the ship will, if possible, pursue; the master must not deviate from it, unless compelled to do so from necessity. If there is no such usual course, then the master is bound to proceed to the destined terminus in the most natural, direct, safe and advantageous way.

An unreasonable and unnecessary delay in commencing a voyage, where the risk begins with the sailing of the vessel from the port,\* or a similar delay in port, where the insurance is "at and from" a port, and the risk has commenced, or an unusual, extraordinary, and unnecessary extension or protraction of a voyage, either at sea or in a foreign port, is a deviation, because it is certainly a change, and indeed an increase of the risk.

Going into a port which did not belong to the established, or the natural and proper voyage, is a deviation; and a very common one. So is the entering into a port which does belong to the voyage, but, by the usual course of it, should not have been entered at that time, or in that order.

The master must not deviate from his voyage in order to gain profit by towing or assisting other vessels that may be glad of aid. The laws of humanity, however, over-ride all other regulations, and a master is justified in deviating where there is a great necessity, as in order to pick up the crew of a wrecked or burning vessel, or in lending aid to one in great danger of foundering, &c. And should the deviating ship itself, under such circumstances, sustain damage or loss, the underwriters would remain liable.

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\* But where the insurance was "from" a port, it was held that a delay of six months after the policy was made, it not appearing that the vessel was detained by fraud or any sinister design, nor that the risk was thereby enhanced, was not a deviation, the jury have found that the delay was not unreasonable. Earl v. Shaw, 1 Johns Cas. 313.

## CHAPTER XL

### GENERAL AVERAGE.

The doctrine of general average contribution is founded upon the idea of a co-partnership between the owners of ship and cargo, for mutual protection against the extraordinary perils of navigation.

Whenever an extraordinary peril is impending over the whole adventure, and the master, who is the common agent of all concerned, acting in good faith' and with common discretion, selects a particular part of the property at risk and destroys it, or exposes it to some special injury or risk, with a view thereby to avert or mitigate the common danger, the owner of that part is entitled to satisfaction for his loss by an average contribution.

The amount paid by each of the co-adventurers, as his share of the contribution, is exactly proportioned to the value of his property, as finally saved by the *sacrifice*, or at the time it was benefited by the *expenditure*; this sum is ascertained in most cases directly after the ship's arrival at her port of destination, and is there assessed upon each of the co-adventurers, who are in law *primarily* liable to the party who has suffered by the loss; if, however, they are insured, they are entitled to claim from their underwriters the same proportion of the sum insured in the policy, as the amount assessed upon them by way of

contribution, bears to the whole value of their property, as saved by the sacrifice. The process by which the amount of damage is ascertained, and the different sums to be paid in contribution for it are assessed upon the parties interested, and made good to them by the underwriters, is called the *adjustment of general average*. 1 Magens on Ins., 55; 2 Arnould on Ins. 880.

The law of general average, has its foundation in equity. The principle that "what is given for the general benefit of all, shall be made good by the contribution of all," is recommended not only by its equity, but also by its policy, because it encourages the owner to throw away his property without hesitation in time of need.

Mr. Justice *Grier*, delivering the opinion of the court in the case of Ship "Brutus," said: "In order to constitute a case for general *avérage*, three things must concur: 1st—A common danger; a danger in which ship, cargo, and crew all participate; a danger imminent and apparently 'inevitable', except by voluntarily incurring the loss of a portion of the whole to save the remainder. 2d—There must be a voluntary jettison, *jactus*, or casting away, of some portion of the joint concern for the purpose of avoiding this imminent peril, *periculi imminentis evitandi causa*, or, in other words, a transfer of peril from the whole to a particular portion of the whole. 3d—This attempt to avoid the imminent common peril must be successful." *Barnard v. Adams*, 10 How. 270, 303. See also, *Sturgis v. Cary*, 2 *Curtis*, C. C. 59, 66.

Mr. Parsons, in his recent and very valuable treatise on Maritime Law, vol. 1, p. 288, says: "If the sacrifice or loss be not voluntary, the very foundation of the claim is taken away, as that is the right which he who inflicts upon himself a loss for the benefit of another, has to compensation. It must be necessary, or justified by reasonable cause, for, if it be not, it is only the wanton destruction of property by those who are in charge of it, and they or their employers must respond to the full value of what is lost. It must be successful, for if it does not save other property or interests, there is in the first place,

no sacrifice, as it may be presumed that the property jettisoned would have been lost with the rest; and, in the next place, if no one is benefited by the sacrifice, no one can be called on to contribute a portion of what was saved for him, in order to make the loss equal."

*What is understood by Jettison?*

Jettison is defined in the Rhodian law to be *jactus mercium factus levanda navis gratia*, a heaving overboard of the goods in order to save the ship. It is the most perfect example of a general average loss, and when made intentionally, for the sake of saving the whole adventure from imminent danger, is generally admitted as giving a claim to contribution.

*What is required of the master in a case of jettison?*

The occasions and circumstances of the jettison ought to be carefully inscribed in the log-book, together with the exact quantities of the articles so lost, as far as they can be ascertained. The objects thrown overboard, must have been expressly selected for the purpose; and care should be taken to throw overboard the most weighty and least valuable articles first, if time and other circumstances will permit of the selection being made.

*If the case admits of delay, should the master consult with the officers and crew, before making a jettison?*

Most of the codes of sea-laws require the master to consult the officers and crew before making a jettison. Where the occasion admits of it, the master will naturally consult his officers and men, but to subject him to their opinion is so far taking the government of the ship out of his hands. And it is obvious, that in those cases of desperate and urgent danger, which allow no time for hesitation and discussion, no greater degree of deliberation should be required than may be necessary to rescue the measures resorted to from the reproach of rashness. Mr. Chancellor Kent has thus stated the law on the subject: "Consultation is not indispensable previous to the sacrifice. A case of imminent danger will not permit it; but it must appear that the act occasioning the loss was the effect of judgment and will; and there may be a choice of perils, where there is no possibility of safety." Kent's Comm. (5th ed.) 238.\*

*If the jettison is rendered necessary from the ship being too heavily laden to encounter the ordinary perils of the sea, does it constitute a case of contribution?*

The loss, in this case, arises from the wrongful act of the master, and does not constitute a case of contribution.†

*Where the loss or damage is attributable to the usual chances and accidents of the voyage, does a subsequent sacrifice consequent upon such loss or damage, constitute the whole a general average?*

It does not. If there is any contribution it must be proportioned to the value of the voluntary sacrifice. Hence, when

\* A consultation between the master, officers and crew, though in some cases proper to precede a voluntary sacrifice, is not essential to make a case of General Average. *Columbian Ad Co v. Abby*, 18 Curtis (Peters), Sup. Ct. Rep. 176. Note to 2d Ed.

† So if the unseaworthy of the vessel, at the time of sailing on the voyage, caused a sacrifice to produce the necessity for the jettison, the loss is not within the exception of the perils of the seas, and the vessel is liable for the whole value of the goods thrown overboard. 19 Howard, 162, 166; 17 Howard, 100, 110, 18 Maine, 357. Note to 2d Ed.

the masts, spars, rigging and sails of a vessel at sea were carried away by the violence of the weather, and after hanging by the vessel's side for half an hour, were cut loose for the preservation of the vessel and cargo, the owners were held not entitled to contribution, unless, indeed, for the loss incurred in separating the masts and rigging from the hull, after they were carried overboard by the violence of the weather. The contribution could only be proportioned to the value of those articles, when thus hanging by the side of the vessel. *Nickerson v. Tyson*, 8 Mass. 467.

By some adjusters, the value of the wreck itself, as a wreck, is allowed in general average. But this is not usual in New York. The first or actual cause of the loss was not voluntary, but was a loss by a peril of the sea; and although the loss of the sales and rigging was made absolute and complete by the act of cutting away the wreck, the true nature of that loss must be looked for in the original incident, and the cutting away afterwards must be considered only the consummation of the inchoate act.

*In order to give a claim to a general average contribution, must the loss be submitted to under the pressure of a real and imminent danger?*

It is an undoubted requisite of a general average loss that it should have been incurred under the pressure of a real and imminent danger. The sacrifice may have been *bona fide*, made with a view to the general safety; but it can give no claim to contribution unless that safety shall appear to have been really endangered. I am not bound to make good to another a loss he has intentionally incurred, with a view to my benefit, if such loss was one which a man of ordinary firmness and sound judgment would not, under the circumstances, have sub-

mitted to. The sacrifice must have been made under the urgent pressure of some real and immediately impending danger, and must have been resorted to as the sole means of escaping destruction. Arnould on Ins., § 884.

*Where the general safety has not been imperilled, is contribution due?*

Where the general safety of the whole adventure is not imperilled, a loss incurred for the safety of part gives no claim to contribution.

In the same way, where expenditures appear to have been made not for the joint benefit of both ship and cargo, but for the benefit either of the ship alone, or of the cargo alone, they can give no claim to general average contribution, but will be a charge on the owner of the particular interest benefited thereby.

*Must the general safety be the object of the sacrifice?*

It must, and if made with any other object, it can give no claim to contribution.

*Is the freight of jettisoned goods to be contributed for?*

In case of jettison of goods, as the ship-owner cannot entitle himself to the freight of them, since he is prevented from delivering them at the port of destination, this freight is included

in the amount of sacrifice, and must be contributed for. The Nathaniel Hooper, 2 Sumner's R. 542.

The owner's freight being, so to speak, contained in the goods, shares the fate of the merchandise, and is jettisoned with the goods thrown overboard.

*Is a jettison of Deck-load usually contributed for in general average?*

Goods *shipped on deck* contribute if saved, but if lost by jettison, they are not entitled to the benefit of general average; for they, by their situation increase the difficulty of the navigation, and are peculiarly exposed to peril. Dodge v. Bartol, 5 Greenl. 286; Cram. v. Aikin, 18 Maine R. 229; Hampton v. Brig Thaddeus, 4 Martin, N. S. 582.

On proof, however, that they are so carried according to the common usage and course of trade on the voyage for which they are shipped, they are contributed for, if jettisoned, like other goods; and no notice to the underwriters of the existence of such custom is necessary in order to make them liable, they being bound to know the usage of the particular trade. Taunton Copper Co. v. Merchants' Ins. Co., 22 Pick. 108, 113 to 115.

Were the consenting parties alone concerned, viz., the ship-owner who takes a deck-load and the merchant who ships it, there would probably be but little dispute, because each would be cognizant of the risk he thereby incurred,—the one of losing his goods, the other of losing his freight, and both of them imperiling the entire joint adventure. But there are two other classes of persons whose interests may be injured by this proceeding. 1st—There may be shippers of goods below deck totally unconnected with the proprietor of the goods on deck, and perhaps ignorant when they sent their property on board of the intention of carrying any deck cargo. They will urge

that in case the deck-load is thrown overboard, although for the general preservation, they must not be called upon to contribute to the loss, inasmuch as they never assented to goods being placed on board in an extra-dangerous situation at *their* risk; but, on the contrary, that they are the injured parties by the general increase of danger caused to the whole of the interests through carrying a deck-load at all. They will, at most, consider themselves unconcerned in the fate of goods on deck, whether they be safe or lost; and will not consent to contribute to reinstate the loss of them, although admitted to have been voluntary and determined on to relieve the ship when she was in danger. 2d—The underwriter's interest, though in general terms concurrent with that of the parties whose property is by them insured, is not in all respects identical. And though the original parties to a jettison of deck-load might have to pay their proportion, the underwriters, unless their consent to risk of deck cargo had been specially obtained previously, would object to contribute towards the jettison of such goods, whether they have insured the cargo itself, the ship, or the freight. They object to it as an additional and unwarrantable risk; one not contemplated in the rate of premium they ordinarily charge.

Deck-load, is, therefore, usually at its own risk, and must pay its own charges; these are called special charges, and must be deducted from the net value before contributing to the general average.

Deck-load, though not contributed for in general average when sacrificed, must contribute for the sacrifice in addition to its own special expenses or charges.

*Is the cutting or slipping of the cable, for the purpose of putting to sea on account of the danger of going ashore, or running foul of other vessels, or to avoid any other impending peril, a subject of contribution?*

When a ship at anchor is in danger of driving on a lee shore, during a gale; or when another vessel riding near her, is driving towards her, and a collision becomes probable, or when in violent weather it becomes necessary to leave an anchorage, it being no longer safe to remain there, and it is found impossible to weigh the anchors; or when to extricate a vessel that has got ashore, her anchors and cables have been carried out for the purpose of heaving her afloat;—when, in any of these cases the general safety is secured by slipping from or cutting away the ground-tackle, such loss is to be made good in general average. The ropes or chains must really have been cut or slipped for that purpose; and there must have been some reasonable expectation that their sacrifice would produce the effect desired and intended. Proper precautions should have been taken, also, for the recovery of the anchors and cables, by having buoys attached to them previously to slipping.

In making good anchors and cables slipped, it is the custom to charge the entire cost of the anchor, and two-thirds of a rope cable; also two-thirds the price of a chain cable. When chain cables were first introduced in this country, they were by many insurance companies exempted from the deduction of a third new for old, for the purpose of encouraging their introduction. In England it is the custom to charge five-sixths of the price of a chain cable to general average.

*Is the loss of a cable and anchor, by anchoring of necessity under extraordinary circumstances in an unusual and dangerous place, a case for contribution?*

Mr. Parsons, in his Treatise on the Maritime Law, vol. 1, page 290, states: "If the vessel was obliged to anchor in an unusually dangerous place, to avoid a worse danger, or upon a rocky bottom which threatened to chafe or cut the cable, or

catch and break the anchor, and in this way either or both were lost, it might be a difficult question—of fact, however, rather than law—whether this was an average loss. The question would be, was it a voluntary sacrifice, or only an exposure to one of those sea perils which the ship must encounter whenever they occur, and which would bring this loss rather within the description of loss by wear and tear, than of voluntary sacrifice. It is obvious that this must depend on the circumstances of the case. We should say, however, that a loss of this kind should not be considered as voluntary, and, therefore, should not be regarded as an average loss, unless the anchoring in that place or way was unusual and unnecessary, except for the purpose of saving the cargo from some peculiar peril, and, but for this purpose, would not have been done."

Mr. Phillips, in his Treatise on Insurance, vol. 2, § 1,296, is of opinion that, "if such a loss take place under extraordinary circumstances, within the risks insured against, or in consequence of the unusually violent operations of the perils assumed by the insurers, it is difficult to reduce this damage within the mere wear and tear of the voyage, upon any principle which would not exonerate the insurers from all average on account of damage to the ship. Whether it is to be considered general average depends upon its being incurred purposely. If a ship, as often happens, come to anchor to avoid going upon a lee shore, and can escape from this perilous situation only by cutting or slipping her cable, this is a sacrifice intentionally made under extraordinary circumstances, and as directly for the general safety as any jettison or other sacrifice can be imagined to be in any case whatever. The loss of the cable and anchor, or the expense of recovering them, seems to come in such case, or under other extraordinary and perilous circumstances, within the principles of general average."

There is a diversity of opinion on this question. Some are of opinion that this damage, whether it happen in the usual course of the voyage, or under extraordinary circumstances, is a part of the wear and tear of the ship, for which the owner is

entitled to no contribution from the owner of the cargo, or indemnity from his underwriters.

Mr. Arnould states that, "where the ship in order to avoid capture, or a lee shore, casts anchor in a foul and rocky bottom in some unusual place of anchorage, and the cable is consequently chafed asunder by the friction, or the anchor so firmly wedged that it cannot be weighed, it has been a subject of great discussion, especially among the German lawyers, whether the damage thus occasioned is a general average loss. It appears that in practice it is frequently adjusted as such; but on principle, as the damage thus incurred was not intended or anticipated as the result of the act, as it was directly caused not by the agency and will of man, but by the force of the elements, it ought not to be considered a general average loss." Arnould on Ins., vol. 2, p. 897.

Though the language of the American and English cases and books is uniform, that to constitute a general average loss, the act and volition of man is requisite; a loss of cable and anchor by anchoring in an unusually dangerous place, if the result of an intention to save the cargo from some impending peril, is, in practice, not unfrequently adjusted as a general average.

But, when a ship in her ordinary navigation drops her anchor among rocks, or moorings of other vessels, and afterwards finds it impossible to weigh it, and is in consequence obliged to unshackle the chain or cut the rope cable, the loss is borne by the owner; for the anchor and cable were in fact lost as soon as they were dropped, just as much as if the cable had immediately broken. They were in a situation from which they could not be recovered, and so there could be no claim as for a voluntary loss. If, however, a vessel is driving with her anchor down, or being in danger she lets go her anchor, and it hooks or drops into moorings, rocks, &c., and she is obliged to slip, then it becomes general average. Or, in case of a vessel fouling another ship's ground-tackle,—if the anchor could have been recovered in ordinarily fine weather, but a gale coming on makes it highly dangerous for her to remain where she is, and the cable is in

consequence cut or unshackled, the loss then ranks as general average.

If an anchor by which a vessel is moored, is lost by the parting of the cable, the loss is denominated "wear and tear," and is borne alone by the owner. It is an ordinary casualty to which vessels are liable.

When anchors and cables are regained after others have been bought to replace them, they are generally sold for the benefit of those concerned with their loss, and the net proceeds of their sale, after deducting the salvage and other expenses, go in reduction of the cost of new anchors and cables. If they are picked up previous to new ones being purchased, then the salvage and all other expenses of the recovery is chargeable in general average.

*When, in consequence of some disaster, it becomes necessary for the common safety of ship and cargo, for the master to put into a port out of the course of the voyage, what charges and expenses usually belong to general average?*

By the laws of most of the commercial states of the United States, if a master, in consequence of some disaster, for the common safety of ship and cargo, voluntarily puts into a port of refuge, and there necessarily, and for the common benefit, unloads the cargo to repair the ship, and the ship is repaired and completes her voyage; the pilotage and towages in and out; custom-house and health officer's fees; Notary's account for protest; survey of the ship to determine her condition on arrival; postage and telegraphic dispatches, when not repairing; the wharfage on the ship; the wharfage and storage of the cargo; the expenses of unloading and re-loading; accidental damage done to the cargo in consequence of unloading; hire of people to guard the property or to pump the ship; commis-

sions on advances by the ship's agent, so far as the same are for general average purposes; adjuster's fee; commissions for custody of cargo; and, in general, all the other expenses incurred for the general good, and not properly belonging to the repairs of the ship, including the wages and provisions of the crew from the time the ship voluntarily changed her course to go into the port, to the time she left it to resume her voyage; are considered as general average charges, and are contributed for by ship, freight and cargo, according to their respective values.

Judge Marvin, in his recent decision, in the case of *Roberts, et al., v. Ship Ocean Star and cargo*, says—"It is an obvious principle of equity, that whenever expenses have been necessarily incurred for the common benefit of two or more interests, by a person authorized to act on behalf of the parties concerned, the interests benefited ought to contribute to the expenses, in proportion to their respective values; And whenever expenses have been rightfully incurred for the benefit of one interest alone, that interest ought to bear the burden of it."

Bearing this principle in mind, it will be no difficult matter to ascertain what proportion of expenses and charges are applicable to general average, when a vessel puts into a port to refit, &c.

*Surveys.*—On arrival at an intermediate port in distress, the first survey held on the vessel, as it regards the collective interests, is general average. So are all other surveys requisite for the instruction of the master as to the measures to be pursued for the common interest. And when surveyors are intelligent, and faithful in the discharge of their duties, uninfluenced by private or local interests, their report is entitled to credit, and is a very useful document in the settlement and adjustment of losses. But, the master is, in no case, bound to follow the recommendation of surveyors, nor will their recommendation relieve him or his owners from any portion of their just and legal responsibility for his acts. Under the impression that surveys are necessary to justify the acts of the master, and that the cost of them is general average; he permits the consul or

agent to send on board his vessel several sets of men, at different times, going through all the forms of written appointment, return, and record; when, perhaps, only one survey and one report, comprising distinctly what they saw and recommended, is all that is needful. It is obvious, that this practice of multiplying papers, is not done so much with a view of benefiting the master or his owners, as with a view of justifying charges. Not only are the Consul's and agent's own fees thus enhanced, but, incidentally, more surveys are called, and more reports made and authenticated, than are useful or needful. This practice has increased so much of late years, and reflects so much on the skill, judgment, and intelligence of the master, that he who wishes to advance his reputation, should take every precaution to check the abuse. No vessel can enter a South American port in distress, and escape the payment of four or five hundred dollars to surveyors and consular officers. And it is to be regretted, that this practice prevails to a greater extent amongst the representatives of the United States in foreign ports, than with others. Attempts have been made to reform this abuse by Federal Legislation, but as yet without success.

The consul requires the master to address to him a written request for a survey. He then makes an appointment of two or more persons; these persons examine the vessel and make a written report, for which service the consul pays them a large fee. The consul records the master's letter, the act of appointment, and the report, makes a certificate of the authenticity of each, and two or three copies, all of which he authenticates, and charges for each certificate. Thus a mere preliminary survey is made to cost from seventy-five to one hundred dollars, when the whole thing might and should be accomplished for ten dollars.

There is neither law nor necessity for the interference of a Consul of the United States in the appointment of surveyors; any competent men may be selected, with the approbation of the master, and he may agree with them as to fees; in the same manner as he may bargain for anything else. Whenever their

reports are finally made up, it will be expedient to have one certificate from the consul that the surveyors appeared before him and verified their acts; but even this may be dispensed with.

*Expenses of Unloading* :—If the ship arrives in a port of distress in a leaky condition, or in such a condition as makes it necessary that she should be discharged for the common benefit, the expenses of hiring men to pump and unload the ship, and to remove the cargo from the wharf to a warehouse, the wharfage on the cargo upon landing and the use of trucks and labor in storing the cargo, are all expenses incurred for the common benefit, and should be apportioned upon the ship and cargo. Phillips, Stevens & Benecke, 124. The ship and cargo being separated, each interest thereafter should bear its own expense, except, indeed, where they are again re-united, and the voyage completed, when the expenses are adjusted according to the law of the port of delivery.

Pilotage into port, fees of entry at the custom-house, the notary's fees, surveyor's and divers fees for surveying the ship and diving under her bottom before an abandonment of the voyage, with a view to determine the question of repairs, the costs of a salvage suit instituted against ship and cargo, are all generally apportioned upon ship and cargo.

The accounts of the master's agent or consignee divide themselves into three classes—1st, disbursements on account of the ship or materials alone; 2nd, on account of the ship and cargo; 3d, on account of the cargo alone. His commissions arrange themselves in the same manner. Care ought to be taken, particularly as to the labor bills, that the charge is entered to the right account and for the right time, and that the account shows fully the cause or nature of the charge.

*Repairs*, in which is to be included the dockage or wharfage of the ship while undergoing them, are never contributed for in general average—except where they are made necessary by an injury voluntarily inflicted for the common safety, or where they are temporary merely, and necessary to save and carry on the cargo, but are afterwards of little or no benefit to the ship.

So far as such temporary repairs are of any lasting or peculiar value to the ship-owner, he must pay for them.

But when instead of discharging cargo at an intermediate port, the vessel goes into dock for repairs with cargo on board, the charge is generally allowed as a proper subject of general average.

According to the decisions of some of the *French* tribunals, the expenses of unloading, storing and re-loading the cargo to make repairs, in a port of refuge, in consequence of damage done to the ship by storms or other *vis major*, and not voluntarily inflicted for the common safety, are not subjects of general average contribution, but fall on the ship alone; the ship-owner being held bound to keep his ship in repair, and must, therefore, pay the expenses of unloading to make the repairs. *Code de Commerce, par M. Rogron, Art., 403 et Com. Emerigon's Traite des Assurances, note by Boulay, Paty, tom. 1. p. 620.* Others have held in near accordance with our law, that if the going into port was voluntarily determined on by the master and crew, after "*deliberation motivee*," under circumstances of pressing urgency, in order to save the cargo, as well as to repair the ship, that such departure from the voyage is a general average act, and the necessary expenses of unloading, storing and re-loading the cargo, in order to repair the ship and proceed on the voyage, are to be contributed for in general average. *Droit Commercial, par M. Pardessus, tom. 3, § 741. Traite des Avaries, par Ernest Frignet, Paris 1859, tom. 1. § 419.* The French Code, Articles 400 and 403, makes wages and provisions, during a deviation and delay for repairs, a particular average on the ship when it is chartered for the voyage, and general average when it is chartered by the month; and the damages to be repaired were voluntarily inflicted for the common safety.

By the "*Usage at Lloyds*," the pilotage in; boat hire; harbor duties; quarantine and health dues; custom-house fees; postages and dispatches; use of warps and tackle and the wharfage on the ship while unloading; expense of unloading and putting the cargo in store, are general average charges. The cargo

being separated from the ship and stored in safety, the general average charges cease. Storage of the goods; cooperage; drying or improving their condition, are charged to the goods; labor re-loading; outward pilotage and towage, are special charges to freight. Wages and provisions for the crew are never charged in England to general average, nor to the underwriter on ship or freight. The loss falls on the ship-owner.\*

*What is the rule with reference to general average, as to money which the captain is obliged to raise abroad, in order to enable him to prosecute the voyage?*

It appears to be a rule, established in all countries without exception, that if a vessel, for the necessities of which, upon the passage, bills have been drawn, arrive safely at the place of her destination, the charges incurred in drawing, such as commission, loss in the exchange, interest of money advanced, etc.; must be added to the other expenses, and repaid by the parties interested, according to their respective shares, so that the charge of raising money for defraying expenses of the nature of a general average, belong to general average; those incurred for paying a particular average on the vessel, constitute a particular average, etc.

*Sale of part of cargo for the common benefit?*

In cases of absolute necessity, when the master is in a foreign port, and has no other means whatsoever of raising money, he may sell a part of the cargo for the purpose of procuring funds. And when such sale is clearly made out to have been for the

\* The SPANISH LAW proceeds on the principle that the first or real cause of expenses is responsible for all the consequences.

According to the Spanish Commercial Code, if a ship put into an intermediate port, owing to a leak proceeding from inherent defect, the owner is chargeable with every expense until she have resumed her voyage. If she go there from a necessity which we call Particular Average, the underwriters on ship pay the whole expenses. If the forced deviation arise from the state of the cargo, on the cargo all the expenses are thrown. Finally, if the cause of putting into port be one in itself of General Average, then all the disbursements and the repairs are claimable as General Average. *Note to 2d Ed.*

*general benefit*, it entitles the owner of the goods to claim a general average contribution in respect of the loss he has sustained by the transaction, just as though the goods had been jettisoned. 3 Kents Comm. (5th ed.) 242. But the loss arising out of such sale gives no claim to contribution where the sale is effected to supply the ordinary expenses of the voyage.

The master has no right to sell an entire cargo at an intermediate port to raise funds to repair his vessel, etc. He has the same right to sacrifice a part that the remainder of the interests may reach their destination, as he has to throw a portion into the sea to procure the safety of the rest. He should therefore, be careful not to dispose of more than is absolutely necessary. The loss on such a sale will form an item in the average adjustment and will be applied to the columns of disbursements *pro rata*. The loss is discoverable by making up a simulated account sales, as if the goods sold had arrived in a sound state, from which the actual sales will be deducted. In settling with the proprietors of cargo for average, the sound value of their goods sold will be set off against the amount claimable from them for general average and charges.

#### *Wages and provisions of the crew.*

The expense of wages and provisions during delay and departure from the course, until the ship is again proceeding for the port of destination, are by the law and the general practice in the United States included in the amount to be contributed for in general average, whether the damage which occasions the departure or delay is general or particular average.

Mr. Arnould speaking of these expenses, remarks: "In *England* they can give a claim neither to general nor particular average, but fall exclusively upon the ship-owner, upon the principle that he is bound by the very contract of affreight-

ment, and as a part of the consideration for which the freight is paid him, to keep a competent crew on board, from the commencement to the end of the voyage." 2d. Arnould, 910.

This reasoning seems inconclusive, unless for consistency it is extended to every other expense incident to making a port for the general safety; it may be said with equal force, that the ship-owner is bound to pay every charge, ordinary or extraordinary, that may be necessary to enable him to accomplish the voyage that he may earn the freight.

Lord Tenterden suggests, that whenever a vessel puts away for the purpose of repairing damages which are themselves the subject of general average, the wages and provisions should be allowed as an accessory. Abbott on Shipping, Chap. 10, Sec. 5. 497. But the "custom at Lloyds" as exemplified in statements made by British adjusters, ignores the rule.

Marshall, an approved English authority, writing in 1802, cites from Beawes the following rule: "Where a ship is forced to enter a port to repair the damage she has suffered in a storm, being unable to continue her voyage without apparent risk of being lost, the wages and provisions for the crew from the day it was resolved to seek a port to refit the vessel, to the day of her departure from thence, with all the charges of unloading, re-loading, anchorage, pilotage, and every other expense incurred by this necessity, shall be brought into a general average."

Marshall on Ins., Book 1, Chap. 13, Sec. 7.

This rule, thus approved in England, is now, and always has been, the foundation of the American practice; British courts of law have invaded it and the "Custom at Lloyds," has been to disregard it in many particulars, but nevertheless the courts of this country have adhered to it.

The *French Code*, Articles, 400 and 403, makes wages and provisions, during a deviation and delay for repairs, a particular average on the ship when it is chartered for the voyage, and general average when it is chartered by the month; and the damages to be repaired were voluntarily inflicted for the common safety.

In the United States wages are allowed at the rate agreed between owners and mariners *only*; many ship-masters erroneously believe that they are entitled to a particular sum per day when in a port in distress. If the master's wages are \$150 per month, he receives \$5 per day, and if his wages are but \$60, he receives but \$2.\*

Many large ships are sailed at a nominal rate and prime, say \$20 or \$30 and 5 per cent. The rule adopted by adjusters at New York, is, to ascertain what the ordinary wages per month of a skilful master would be for a vessel of similar kind and class. And a rule similar to this is adopted at Boston and San Francisco.

The rule as to allowance for *Provisions*, is as follows: at *New York*, the master \$1 per day; the mates 50 cents each; the seamen 30 cents each; at *Boston*, the master \$1 per day; the mates 50 cents; the seamen 25 cents; at *San Francisco*, the master \$2 per day; the mates \$1.50, and the seamen, 30 cents.

*Are the wages and provisions of the crew, during the time they are employed in saving the materials and cargo of a wrecked ship, or while getting off a ship accidentally stranded, general average?*

In the case of ship *Ocean Star and Cargo*, Judge *Marvin*, delivering the opinion of the court, said: "Such is the nature of the contract between the shipper and ship-owner, and such is the law applicable to such contract, that the master must not abandon his ship or cargo upon any ground, when it is practicable for human exertions, skill and prudence to save them, or any part of them, from impending peril. A loss of the goods, caused by negligence, carelessness or unskilfulness, or any loss, which might have been prevented by human exertions, is not a loss by a peril of the sea, which exonerates the master and ship-

\* The custom in Boston, in case of loss of vessel, is to allow the master \$5 per day for wages and board, while attending to saving vessel's materials, &c.

Wages and provisions of extra hands, i. e., Waiters, Cooks and Servants, to attend on passengers, are not subjects of General Average contribution, on the ground that neither the goods of passengers on board nor intended for sale, nor their passage-money pay average.

In *Potier v. Ocean Ins. Co.*, 3 Sumner's Rep. 38, it was decided that where a vessel meets with disaster, and bears up for a port of necessity, wages and provisions are chargeable as in General Average, although she was in ballast. The distinction between General and Particular Average being determined by the consideration whether the act is intended for all concerned in the voyage, and not in particular by the consideration who are to contribute to the indemnity. *Note to 2d Ed.*

owner, under their bill of lading, from liability. After shipwreck, the master is bound to exert himself to the utmost to save the goods, and to attend to their safe custody and preservation. In *Cordes v. Propeller Niagara*, 21, How. 7, the Supreme Court of the United States held, that the ship-owner was liable for loss and damage happening to the cargo after the ship had stranded, because the master did not sufficiently exert himself to prevent such loss or damage. And in *King v. Shepherd*, 3 Story, 358, the ship-owner was held liable for the loss or theft of a keg of specie, happening while the ship was stranded on the Florida reef. In like manner the seamen are bound to labor in saving the materials and cargo of a wrecked ship, under a penalty of a forfeiture of their wages, and according to the laws of Oleron *la plus grande punition*. The materials saved and the freight in the cargo, if the original freight can be earned by a transhipment of the cargo, are both pledged to the seamen for their wages. But although the master and crew are thus bound to labor in saving the cargo, yet they are not bound to do this, at their own or the ship-owner's expense, after the ship has become a total wreck and no freight has been or can be earned. If after this event, the master and crew labor in saving the cargo or any part of it, they do so, not as the crew of the ship now lost, but as the agents or servants of the shippers, being constituted such by operation of law consequent on the disaster, and they are to be paid by them a reasonable compensation out of the merchandise saved by them. If they save the materials or materials and cargo together, the interest or interests benefited by their services, ought to pay the expense. Wages by the day at the rate of their monthly wages and provisions, would always be reasonable, and is the rule adopted by the French code. In extraordinary cases a small additional sum might be rightfully allowed; but they are not, except for very extraordinary services, entitled to the rewards of salvors. *Bridges v. Niagara Ins. Co.* 1 Hull, 423; 2 Phillips on Ins., § 1472; *Marvin on Wreck and Salvage*, § 149, *Code de Commerce*, par J. A. Rogron, § 261. General Average by Baily, 124. Generally, how-

ever, on this coast, the slight services of the seamen to the cargo, after the ship is lost, are no more than a fair equivalent for saving their own personal effects by the wreckers; and as to any slight difference, *de minimis non curat lex*. But if they continue for several days or weeks to labor in saving the cargo, as in some instances they have done on this coast (Florida), they are entitled to be paid by the day, as above stated, out of the cargo saved by them.

The cargo is not to be made liable for any part of the wages and provisions of the crew, during the time they are employed in getting off a ship accidentally stranded. Some average adjusters, in the United States, make the cost of wages and provisions a common charge, from the time that the ship, being floated, bears away to go into a port of refuge, to the time the voyage is abandoned.\* I have not met with any decision of our courts expressly affirming or disaffirming this practice. There are very respectable dicta against it. Justice Story says, "that the expenses of going to a port of necessity to refit can properly be a general average only, where the voyage has been or might be resumed. If it has been abandoned from necessity, then it is not a case for the application of the doctrine." Williams v. Suffolk Ins. Co., 3 Sum., 510. 2 Parsons on Maritime Law, 314. It appears to me that, upon principle, the cargo ought not to be held liable in general average for the wages and provisions of the crew, when the voyage is abandoned at the port of necessity, but only where the voyage is resumed and the cargo delivered at its port of destination."

#### *How are Salvage and Expenses usually apportioned?*

When a ship and cargo are saved together, as, by lightening the ship, carrying out anchors, &c., the total salvage is apportioned upon the ship and cargo, according to their respective

\* It is the general rule in practice in New York and Boston to allow wages and provisions, from the deviation up to the time of separation of interests. Note to 2d Ed.

values. But when the ship is wrecked and lost, the interests are thereby dissociated, and, in as much as the different articles of the cargo are likely to belong to different owners, each separate article of the cargo saved ought, as near as may be, to bear its own expense of saving, so that dry cotton belonging to one owner shall not pay for saving wet cotton belonging to another, nor silks pay for saving rail-road iron. Articles, however, of the same kind, saved at the same time, by the same salvors, in a similar condition, may generally be charged with the same rate of salvage. So, too, in such cases, the wharfage, storage, labor bills in landing and storing the goods saved, ought, as near as may be, to be charged to the separate articles saved, so that goods of great value and little bulk shall not be made to pay the expenses on goods more bulky and less valuable. Expenses of sale should be charged to the goods sold. In such cases, however, the notary's fee for noting and extending the master's protest, cost of documents useful to all the parties interested, and the costs of salvage suit, instituted by all the salvors conjoined, against all the property saved, are ordinarily treated as common charges and apportioned.

Salvage on goods saved from a wrecked ship are often, in England, apportioned *pro rata*, by average adjusters, without regard to any difference in the expense of saving the different articles, on the ground of convenience.

*If Masts are on Fire, and are cut away to save the ship and cargo, assuming that they are of value at the time they are cut, and the vessel is thereby saved, is this a case of contribution?*

This question was raised but not decided in the case of the general average of the Ship "Great Republic," Lee v. Grinnell, 5 Duer 400, 411. The reasons why they should not be contributed for, are thus stated by Mr. Justice *Duer*:—"The cutting

away so far from being a sacrifice of the masts and spars, was a measure for their preservation, so far from destroying any value which they then had, it was the only means by which any part of their original value could be restored and saved." Mr. Justice *Hoffman* was of a contrary opinion; and Mr. Justice *Campbell* declined to express his views upon the subject. They agreed, however, that the point need not be decided in this case, as, in the opinion of both of them, the subsequent event, which defeated the expectation of safety, prevented the loss from being one of general average. The ship and cargo were not saved by the cutting away.

Mr. Justice *Hoffman* remarked, "My own examination has led to the conclusion, that in the present case, the damage to the masts, would have proved a case for general average, had the result of cutting them away been finally successful. But my associate, Mr. Justice Duer, is much inclined to a different view of the point; and I may well distrust my own conclusions, where they do not meet the approval of one who has made commercial law the subject of such extended and profound examination."

This case of the "Great Republic," is considered one of much authority in determining the following questions.

*1st—Whether there is any claim for contribution, where the very thing which is purposely destroyed in order to save other things, could not in any way be saved, but must have perished at all events?\**

*2d—Whether in order to found a claim for contribution, the common adventure must be saved, or the impending calamity averted by means of the sacrifice?*

*3d—Where a cargo is on fire from an accidental cause, and*

\* *Crockett v. Dodge*, 3 Fairfield, 190; *Nickerson v. Tyson*, 8 Mass., 467; *Col. Ins. Co. v. Ashby*, 12 Peters, 331, 340; 1 *Parson's Mar. Law*, p. 316.

*the vessel is scuttled, or water is poured down to extinguish the fire, and goods are thereby injured which the fire had not reached, whether they are to be contributed for?*

The case of the Ship "Great Republic," was argued in the Superior Court of New York, December Term, 1855, before Justices *Duer, Campbell and Hoffman*. Mr. Francis B. Cutting, for Plaintiffs, and Mr. Daniel Lord, for Defendants; two of the most eminent mercantile lawyers in this country. Mr. Justice *Hoffman*, at general term, February, 1856, delivered the opinion of the Court, from which the following is extracted:—

"About midnight, of the 26th December, 1853, the ship was lying at the foot of Dover street, with nearly all her cargo on board, and her sails bent below her royals. A fire broke out in Front street, nearly in a line with the ship, as the wind was then blowing. The watchman awoke the second mate with information of the fire, and that coals were falling about the ship. All hands were called, and stationed. Men were sent into the fore, main and mizzen-tops, with buckets. The fore-sail soon burst into a flame. Attempts to beat out the fire in it failed, and the men stationed in the fore-top were driven out of it. The mizzen-top-sail, and mizzen-top-gallant-sail had then taken fire. The crew attempted to extinguish this, and to cut the sails adrift from the yards. These efforts were vain—the dry cotton canvas soon being a sheet of flame. The firemen had, about this time, arrived with their engines; but would not work on board, or near the ship, for fear of the blocks and other articles, on fire aloft, falling on them. It was then concluded, for the preservation of the ship and cargo, to cut away the masts.

"Here, we may notice, was the first determination to do an act of destruction, to contribute to the general safety.

"At that time, the sails, spars and rigging at, and the heads of, the lower masts, were on fire. No material damage had been done to the spars by the fire.

"In executing this determination, the fore-stay and fore-top-

mast-stay were first cut away, and fell over the starboard rail into the dock. The fore-top-mast broke short off, and fell down endways, through three decks, being on fire at the time, and set the cargo and lower part of the vessel on fire. The main-mast was next cut away; and, in falling, carried with it the mizzen and spanker-masts by the deck. The masts, spars &c., in falling, crushed the boats, rails &c., on the starboard side, and the houses on deck—broke the steam engine, and did other damage. The houses &c., on the upper deck, were all more or less on fire at the time.

"After the masts, spars &c., were cut away, the firemen came on board with their hose, and finally succeeded in putting out the fire on the deck; and it was supposed that the ship and cargo were saved. But all the houses, companion-ways on, and the upper deck, rails &c., abaft the main-mast, were destroyed, or very badly burned. The cabin in the upper between-decks, with all its furniture, the stern of the ship, rudder heads, stores, spare sails, and a quantity of bread in the upper between-decks, also perished.

"It is also found that the masts, spars &c., cut away, were nearly destroyed by fire, *after* they fell on deck.

"The fire on and about the upper deck being extinguished, several streams (of the engines) were removed to another fire which had broken out in the city. After this it was discovered that the cargo was on fire in the lower between-decks, caused by the fore-top-mast falling through the decks, being on fire at the time. The subsequent measures were then taken, as hereafter noticed.

"The first question is this:—Suppose the expectations entertained at this period, when some of the engines were carried off, had been realized, and the disaster arrested, would there not have been a case made, as to many items, for a general average? The fore-stay, the fore-top-mast-stay, the main-mast, the mizzen and spanker-masts were voluntarily cut away. The heads only of the masts were on fire. They were destroyed after they fell on deck. So the spars had received no material damage, and

were burnt on deck. The boats, sails &c., the steam-engine and houses on deck, were injured directly by the cutting away of the masts. The evidence shows that these articles were at the moment of the act of destruction, of an appreciable and considerable value. Had they fallen into the dock, and been reclaimed, they would certainly have yielded a considerable sum to the owners.

"The general rule is, that the cutting away of masts, sails, boats, &c., is an ordinary subject of contribution. It is true, 'that nothing but the presence of imminent danger will entitle the owner to make such a claim; and the sacrifice must at least be the apparent cause of extricating the ship from her perilous situation.'

"But there is much authority to show, that the demand for contribution is not limited to cases, where the voluntary act both commences and completes the destruction of the subject for which it is claimed. It extends to cases where the accidental peril has begun, and the voluntary act has consummated, that destruction."

"But now arises a point, the subject of no little discussion and difficulty. The masts and spars, it is insisted, must have been destroyed. For them there was no possibility of safety. When cut away, they were indeed of a considerable value, but that is not enough. The thing destroyed must have been in such a position as that there was a possibility of saving it, as well as of saving that for whose safety it was given up. What is certain of being destroyed, cannot be treated as of any value —cannot, therefore, be allowed for.

"The masts &c., were, in fact, of value when cut away; that is, had a sudden flood of rain extinguished the fire, they would have been of value; but, as exposed, and under the actual circumstances, they were of no value. Their positive value only arose from their being cut away—and as to such only as fell overboard.

"So distinguished a writer as Mr. Benecke gives this view the sanction of his authority. He says:—'If the master's situation

was such, that, but for a voluntary destruction of a part of the vessel or her furniture, the whole would certainly and unavoidably be lost, he cannot claim contribution; because a thing cannot be said to have been sacrificed which had already ceased to have any value.' (P. 283—London Ed.)

"In commenting upon the subject, Mr. Phillips makes the following remarks (vol. 2, p. 66—Ed. 1853): 'The correctness of this position admits of great doubt. It is inconsistent with cases of undisputed claim for contribution, as, for instance, composition with pirates. The more imminent the peril is, the less questionable seems to be the claim for contribution on account of a sacrifice made to avoid it.' 'If, indeed, the thing abandoned is itself so exposed to destruction that it cannot possibly be retrieved and saved, *and its abandonment cannot possibly contribute to the safety of the ship or crew, cargo or freight*, there may be ground of objection to contribution. But in cases of such objection, the construction will be very liberal in favor of contribution.'

"In the Columbian Ins. Co. v. Ashby (13 Peters 331), the special verdict found, '*that the captain in this situation, finding no possible means of saving the vessel or cargo, and preserving the crew, slipped his cables and ran the vessel ashore.*' The ship was allowed for.

'So in Barnard v. Adams, (10 Howard 273), the captain thought it *impossible* to get by a point without being wrecked and lost; he therefore directed the course of the vessel towards the shore. The ship was not utterly broken up; but it would cost more to get her off than she was worth. She was therefore sold. Justice Grier presents the charge of the Judge as if thus made: 'That if the jury believed, that if there was imminent peril of being driven on a rocky and dangerous coast, where the vessel would have been inevitably wrecked, with loss of ship, cargo and crew, and that the immediate peril was avoided by stranding her at a less dangerous place, it was a case for contribution.' The learned judge enters into a minute criticism of the phrase inevitable, and other expressions. He states the

proposition of the plaintiff's counsel thus: 'If the common peril was of such nature that the thing cast away to save the rest would have perished anyhow, even if not selected to suffer in the place of the whole, there can be no contribution.' He then proceeds:—'If this be the meaning, and we can discover no other, it is a denial of the whole doctrine upon which the claim for general average has its foundation.'

"We cannot but observe that it is contrary to truth of reasoning, as well as to philology, to say, that a peril is inevitable in reference to the whole subject exposed to it, when the event shows that a portion of that subject escaped it. The good sense and the result of the two cases in the Supreme Court of the United States, seems to me this:—

"A state of things may exist, and in those cases did exist, in which a certain and common destruction appeared inevitable, if nothing was done. But if an act was done, and it resulted in evading the peril as to part of the subjects exposed, but another part was lost in the act, the latter shall be allowed for; and this, although the peril incurred as to that part was just as sure of leading to its destruction, as the peril to which it was originally exposed.

"Let the case of the *Hope*, and that of the *Brutus*, be tested by the rule advocated by Mr. Benecke. The vessel was, according to the best judgment that existed in the case, certain of being utterly lost. She was then, at the moment of the act determined upon, of no value. But the act of stranding her in another place, while it brought no greater or other peril to herself, was the means of saving the cargo; and for that preservation, the cargo contributed to meet her loss.

"This reasoning, derived from these decisions, seems to me irresistible, upon the hypothesis of success now presented. The masts and spars were cut away to enable the firemen to come on board, and to use the most, if not the only effectual measures to avert the danger. They succeeded in extinguishing the fire, so that entire success was apparently the consequence of the act. The masts and spars were of a considerable value

at the moment of their premeditated destruction, as well as the ship Hope at the moment before her stranding. Every element in Mr. Justice Grier's propositions, as to what makes a case of general average, is included here. There was a common danger in which all participated—a danger apparently inevitable to all, if no act of man averted it. There was a transfer of this imminent peril, from the whole to a portion of the whole. The act was eminently calculated to preserve the residue of what was exposed, and seemed, for a time, to have done so.

*"I apprehend, then, that although a fortuitous cause has begun the work of destruction of part of a ship—if a voluntary act completes it, and that act averts or diminishes the damage to the cargo and rest of the ship, there is ground for contribution; and that this rule is equally applicable, whether it is certain that the fortuitous cause would have destroyed that portion if left alone, or not.* My own examination has thus led to the conclusion, that in the present case the damage to the masts, spars, railing, and some other articles, would have proved a case for general average, had the result of cutting them away been finally successful. But my associate, Mr. Justice Duer, is much inclined to a different view of the point; and I may well distrust my own conclusions, when they do not meet the approval of one who has made commercial law the subject of such extended and profound examination. Still, the propositions of the adjusters, and the points argued by counsel, have made it necessary to discuss and express my opinion upon the point.

"It happily does not become essential to decide this question, in consequence of the conclusions we have arrived at upon another point, which I now proceed to state.

"I have before noticed the rapid progress of the flames, and the unavailing efforts of the crew to arrest them—the arrival of the engines, and the circumstances which, for a short period, rendered their arrival useless. The blocks and other articles, which were falling from aloft upon the deck, menaced the firemen with a needless peril, and they refused to board the ship, unless the masts were cut away. The moment this was done,

their labors were bestowed and were effectual. The whole peril appeared for an interval, subdued and averted—success seemed to have rewarded the efforts of those engaged, and preservation to have been won when the sacrifice was consummated. But these hopes and expectations were disappointed. The interval of apparent security was the period of the most imminent and fearful peril. All the measures adopted for safety proved sources of destruction."

Mr. Justice Hoffman, in the early part of his opinion, says, "It will tend to precision in understanding and correctness in deciding the case, that the facts be ascertained as they existed at two distinct periods. *One* embracing the time between the discovery of the fire, and the time when, in the language of the finding, 'the fire on the deck was put out, and it was supposed that the ship and cargo were saved'; *and the other*, from that period until the ship was raised from the bottom, to which she had been sunk, and the cargo was taken out."

And he now continues, "This unfortunate result brings us to the consideration of the facts attending the *second* period of the accident; and it is necessary to understand these facts and circumstances with regard to two points of the case.

"*First.*—Whether they displace the apparent right to a contribution for the masts, &c., cut away, assuming such a right to have existed.

"*Next*, (and of far more importance.) Whether they give a foundation to the claim for contribution for nearly two-thirds of the original value of the ship, and for about one-half of the cargo, as well as of the freight.

"And this last question is to be examined also, in connection with all the facts from the commencement to the end of the disaster.

"It is found, that after the fire on and about the upper deck had been extinguished, and several streams had been removed to attend another fire in the city, it was discovered that the ship and her cargo were on fire in the lower between-decks, caused by the fore-top-mast falling down through the decks (it being

on fire at the time), and thus setting the cargo and the ship in the lower between-decks on fire. When discovered, it had such headway that all attempts to extinguish it from above were soon found to be fruitless; and the ship was, therefore, scuttled in three separate places, and soon sunk down ten feet, when she struck the bottom. Every effort to put out the fire was ineffectual, and the ship burned for two days, when being burned to the water's edge from aft to about the fore-mast, it was extinguished. The cargo was burned badly in the second and third between-decks; but that in the lower hold was only damaged by water.

"Up to the time of cutting the masts away, the cargo had sustained no damage by either fire or water; nor was it damaged by the water thrown in or on the ship to extinguish the flames on the upper and in the upper between-decks; and not until the fire was discovered below, caused by the falling of the fore-top-mast through the decks, did it sustain any damage, by either fire or water.

"The grain in the lower hold had swelled so as to break the knees and beams of the lower deck, and otherwise strain and badly injure the ship.

"The vessel was afterwards floated—the cargo taken out, and the ship condemned and sold.

"1st—The first question is as to the effect of these events upon the right to contribution for the masts &c., cut away, supposing it to have been otherwise due.

*"I consider the true rule to be, that the achievement of the object designed, even for a very short period of time, will be sufficient to justify contribution, notwithstanding a subsequent loss, provided the ultimate loss results from a new peril."*

"Pardessus presents as a rule of the *French Law*, this proposition:—'That if once the damage for which the sacrifice had been made is avoided—for example, that the tempest is ended, or the ship has escaped from the enemy, even if it is for a slight interval—contribution is due. The important point is, not to confound the continuation of the same accident, though after

an interval, with a new accident. If the things saved meet afterwards with new injuries, those subsequent events, independent of the first (though they may be extremely close to them), do not prevent that the things which escaped, more or less injured by the new accident, and come to port, should pay the first debt. The goods thus subsequently damaged contribute according to their real value at the time and place when contribution is adjusted. If they have perished in the voyage, though in consequence of a subsequent event, the owners are not held liable.' (Art. 748.)

"The case of Walker v. The United Ins. Co. (11 Serg. & Rawle 61), and the case of Lewis v. Williams, in this court (1 Hall's Rep. 420), sustain the principles thus advocated. The reasoning of Chief Justice Jones, and of Mr. Justice Oakley, is clear and decisive upon the point. And the case of Scudder v. Bradford (14 Mass. Rep. 18), appears to me perfectly consistent with these authorities and decisions.

*"Thus the question is, was the peril which rendered the sacrifice useless, a continuation of the same peril which led to it, or was it a new disaster? The fire which induced the act of destruction was transferred, with the blazing spar, from above, to the hold below, and there continued and spread itself. It seems difficult to say that this was different from the continuation of the same tempest, which, by rendering the sacrifice fruitless, displaces a claim to contribution; and it follows, that no claim exists in the present case for that damage, which, though caused by a voluntary act, did not in reality avert or diminish the peril."*

"2d—I come next to the consideration of that important part of the case which relates to the almost total destruction of the vessel, and of about half the cargo, for which contribution is sought.

"The general features of this interesting part of the case are these:—That the original or primary cause of the loss was an accident not the subject of general average; that a proximate cause of the preservation of the hull and cargo was the scuttling of the ship; that the immediate cause of the scuttling.

was a fire in the hold and between the lower decks of the vessel; that such fire was brought there by a voluntary act of destruction; and that such voluntary act, instead of averting the peril it was intended to prevent, was an actual and efficient agent of the loss that ensued. The primary and accidental cause of the disaster was transferred from one part of the ship to another. It became a continuation of that original cause; a transmission of it, in its full and uninterrupted character, to the vessel and cargo.

"Had no measures been taken to arrest the flames, the vessel and cargo would have been destroyed. Had the scuttling not taken place, the same identical results would have ensued; and ensued, not merely in spite of the voluntary act, but as its direct and immediate consequence. Had the vessel been left unscuttled, a heavy gale of wind, and dash of the waves, might have preserved some portions of her hull and of the cargo. Would it have been possible to sustain a claim for contribution under such circumstances?

"There are cases where contribution has been compelled for sacrifices honestly made, although a severe injury might have left it questionable whether they were essential to the preservation which ensued. But to award contribution for a voluntary act which directly led to the destruction, or which at least, did not for a moment interrupt the progress of the original cause of the disaster—and when that cause was fortuitous—seems unsanctioned by principle and authority.

"The essential constituents of a case of contribution are, that the intelligence, the will and the act of man have intended and produced the sacrifice of the thing for which compensation is sought, and have worked, in whole or in part, the preservation of the property from which it is claimed. The subjects destroyed must have been, in the contemplation of the party, as things to be destroyed. This rule admits, indeed, of a few guarded exceptions, but none which may not be considered; in the ordinary course of events, as comprehended within the intention. The cutting away of masts is probably as often accompanied with

damage to boats and railings as otherwise, and may well be assumed to have been an expected consequence. The leak, as in the case of Magrath v. Church (1 Caine's Rep. 214), may reasonably be anticipated as a probable result of the splintering of masts when cut away.

"With such exceptions, I apprehend the pervading principle of contribution is such as I have stated. *There must be the intent to sacrifice the thing designated. The sacrifice must be accomplished. Some definite advantage must have sprung from it. A final preservation must ensue, not indeed by a logical necessity directly and solely from the sacrifice, but as reasonably contributed to by it, or as consistent with it, as with any hypothesis the circumstances will allow.*

"It appears to me that this principle will be found more discernible than any other, in all the great leading authorities in which a claim for general average has been sustained.

"The important and contested cases of stranding, even accompanied with a total loss, rest upon this proposition. Take the case of the Hope, in the Supreme Court of the United States (13 Peters 331). The vessel was surrounded with dangers. She had begun to strike upon the shoals, and her head swinging round, she was brought broadside to the sea. The captain slipped his cables, and ran her ashore, where she was totally lost. That act was designed to peril the ship, and did in fact wreck her. A definite advantage in changing the location resulted. The preservation of the cargo might reasonably be attributed to it. It is too speculative to say that the ship must have been lost elsewhere, or that the cargo might possibly have been saved elsewhere. An act was done with the certainty of its entailing a loss to the vessel, which may have been less than total, but which was apparently inevitable; and it did tend to save the cargo. It was done as an act hazardous to both, but to avoid a more certain and greater peril. Bernard v. Adams (10 Howard 373) is strongly to the same effect.

"If such is the ruling principle to be found in the law upon this subject, the present case, in the view now considered, can-

not admit of doubt. The destruction contemplated was of the masts and spars, and the ordinary consequential damage. The vessel and each part of the cargo was meant to be saved, not sacrificed. What was designedly given up was uselessly surrendered, and what it was meant to preserve was destroyed by the very act of sacrifice.

"We are brought then to the consideration of the next material act of the agency of man in this catastrophe, viz., the effect of the scuttling. It will be remembered that the ship, when scuttled, sank down ten feet, when she struck the bottom.

"What then was the effect of scuttling? Let it be conceded that all that was preserved of cargo or vessel was saved by this act. Let the utmost force be yielded to the argument of counsel, that, as the vessel was lightened by the progress of the fire, she would gradually have risen to meet, as it were, the fatal embrace of the flames. She would then have burnt lower, and for a considerable part of the ten feet, which, by the scuttling, was submerged. And thus, the ten feet of frame, and the principal portion of the cargo rescued, owed their safety to this deed.

"Still the important and decisive question remains:—What part of the ship was destroyed by the scuttling? It is indispensable, in conformity with the principles before stated, that such destruction should be directly traced to the scuttling and an appreciation of it be possible.

"The flames continued for two days, and burnt the vessel to the water's edge, from aft to near the fore-mast; and no part of the damage can, upon the finding, be attributed to the scuttling, except the breaking of the knees and beams of the lower deck, and the strain and injury arising from the swelling of the grain in the lower hold.

"And as to the cargo, that in the lower hold was only damaged by the water. All the rest was chiefly, if not solely, injured by the fire.

"The question appears to be reduced to this,—Shall the amount of injury to the ship, and damage to the cargo, which

can be definitely traced to the scuttling, be brought into general average?

"It appears to us that the direct damage done to the cargo in the lower hold by the scuttling is a proper subject for contribution.\* We presume it can be arrived at by a comparison of the invoices of the grain there stowed, and the proceeds of the sales of such grain.

"No damage to the articles of the cargo which were between-decks, and on fire, arising from water thrown in, is to be contributed for. The fire is to be considered as still an accidental fire.

"And we think that the damage to the knees and timbers resulting from the swelling of the grain in the lower hold, which directly sprung from the scuttling, is to be allowed, at what it would have cost to repair that specific injury. This, we suppose, the adjusters can, without difficulty, ascertain, and with reasonable precision.

"It is next necessary to state what rules of valuation are applicable to the subjects which are to be allowed for, and those which are to contribute.

"1st. The amount to be allowed for the ship, is that sum which the adjusters shall be able to say, arose definitely from the injury to the knees and beams of the lower deck, and the strain to the ship produced by the swelling of the grain in the lower hold.

"The ship is to contribute upon the proceeds of the sales of her hull and materials, to which is to be added that amount which the adjusters shall ascertain ought to be allowed for injury to the knees, &c., as above stated.

"2d. The damage to the cargo to be allowed for, is to be ascertained by a comparison of the proceeds of the sales with the invoice cost.

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*Note.*—According to English law, the means taken to extinguish fire, as by pouring water into the hold, and the scuttling of the ship to sink her, are not allowed to constitute a general average. Whatever damage the cargo may sustain by that course must be borne by the cargo, and the ship must bear by herself all injury done it.—F. B. D.

"The ordinary rule in case of jettison is, to take the value at the port of destination, and to allow that value, as well as to fix the amount of contribution upon the same basis for what is saved. (2. Phillips, 4 ed., p. 132.) Where sales of damaged goods have been made, the difference between the sales and the valuation, if sound, is the amount to be allowed. (Magens Case xxv, vol. 1, p. 293.) If goods are sold at the place to which the apportionment relates, the amount of the proceeds is the basis on which their contributory value is fixed, (2 Phillips, 151, ed. 1854;) and goods are contributed for at the same rate and on the same basis as goods contribute. (Ibid. p. 132.)

In a case like the present, where the voyage has not commenced, and the goods were recently shipped, their value may properly be tested by the invoices; and the sales of the goods at the same port of shipment may be taken as evidence of their value after the disaster. The difference is the damage to be allowed.

3d. The next question is, on what basis is the residue of the cargo to contribute? The ordinary rule is, that in cases of jettison, the cargo is to contribute upon the value of the goods estimated at their prime cost, or original value; or, if the vessel has arrived at her port of destination, at their value at such port. (Rogers v. The Mechanics Ins. Co., 2 Story's Rep., 178.)

"Mr. Abbott states (847), that if the ship, in consequence of any misfortune to be sustained by general average, be compelled to return to its loading port, and the average be immediately adjusted, in that case the goods only contribute according to the invoice prices; for the price of sale is unknown.

"In the Mutual Ins. Co. v. The Cargo of the George (8 Law Rep. 361), the ship was stranded, and unable to return to the port of departure, or to adopt an intermediate port. The vessel was lost, and a greater part of the cargo saved. The cargo was adjudged to contribute at the prices stated in the invoice and bills of lading, deducting therefrom salvage and other necessary expenses incurred in consequence of the wreck.

"But in these instances, the value of the cargo, *as preserved,*

was to be arrived at—it being a fixed rule, that a subject is to pay according to its value, as it exists when called on to contribute. But, in the present case, all the cargo was, to some extent, injured. All that was preserved was sold. The prices may be taken as a fair test of the value of what was saved.

"We may add, that, in the present case, the consent of all the parties interested to a sale of all the cargo, renders this mode of adjusting the basis of contribution proper, even if another would, in ordinary cases, be more regular. 4th—In this connection, another question arises. It is a general rule, that the goods or articles sacrificed and allowed for, are made to contribute in common with those saved.

"If merchandise is thrown overboard worth \$1,000, and the residue of the cargo, and the vessel, are valued at \$10,000, it is plain that, if the owners of the latter pay the whole 1,000, the owner of the goods jettisoned loses nothing. It is, however, a fundamental principle that he is to be dealt with precisely as if the goods of another had been sacrificed. Hence, he pays with the others; and the contributory interests in the case stated are \$11,000, instead of \$10,000, or 9.09 per cent., instead of 10 per cent.

"In the present instance, on the assumption that only the grain in the lower hold was damaged by the scuttling, and, therefore, the subject of a general average, the loss was \$45,409.88.

"The owners of this grain pay, of course, their proportionate amount of the proceeds of the sales of what was saved. But if they pay nothing upon the amount contributed to them, they would receive from others the whole \$45,409, and get, in other words, the whole value of the goods thus lost to them. They should pay the same percentage on what they get, as the owners of the other portions of the cargo pay upon what they receive.

"We therefore add to the value of the cargo which is to contribute, the amount of the loss which is to be paid to the owners of that part of the cargo allowed for.

"5th—The next question is whether the freight should be contributed for. The voyage was broken up; the voyage cannot be said, indeed, to have commenced. The contracts of affreightment were at an end. Not a dollar of freight had been earned. How can it be treated as sacrificed? The ship is not allowed for. Its accessory, the freight, cannot be.

"When freight was allowed in the Columbian Ins. Co. v. Ashley (18 Peters 364), it was because the ship was allowed for. It was lost, as well as the ship, by the sacrifice for the common good. And when freight *pro rata itineris* (that is, the freight which had been earned at the time of the disaster,) was allowed in Gray v. Walker (2 Serg. & Rawle, 229,) the ship was also a subject of general average.

To allow freight in this case would be, in effect, to make contributors in general average insurers of the freight.

It follows, in this case, that if freight is not to be allowed for, it is not to contribute."

*Whether the property in peril and rescued, must be saved by the sacrifice.*

In the case of the Ship "Great Republic," the scuttling of the ship was conceded to have partially prevented the spreading of the fire, and thus saved vessel and cargo from being entirely consumed; that in fact, ten feet of the vessel's frame, and the principal portion of the cargo rescued, owed their safety to this deed. Therefore, the amount of injury to the ship, and damage to the cargo definitely traced to that act, were allowed in general average.

Had the *effect of scuttling* failed to impede in any manner, the progress of the fire, Mr. Justice Hoffman does not say whether the damage resulting from it would have been allowed, but we infer not.

The *Masts* cut away were not allowed for the reason, as, Mr. Justice Hoffman remarks, that it, "though caused by a voluntary act, did not in reality avert or diminish the peril." And the difference of opinion between Mr. Justice Duer and Mr. Justice Hoffman, as to whether "masts on fire which are cut away to save the ship and cargo, assuming that they are of value at the time they are cut, should be contributed for"—it was stated by Mr. Justice Duer, "need not then be decided, as in the opinion of both of them the subsequent event, which defeated the expectation of safety, prevented the loss from being one of general average."

The elaborate opinion of Mr. Justice Hoffman, concurred in by so profound a commercial lawyer as Mr. Justice Duer, *fully establishes the rule, that in order to found a claim for contribution, the property in peril must be saved by the sacrifice.*

I cannot, however, but think, that when text writers or Judges in describing the characteristics of a sacrifice for which contribution may be rightfully claimed, say the impending peril must be thereby averted, they go too far. The rule should certainly be regarded with some qualifications.

In Stevens and Benecke on Average, by Phillips, pp. 100, 105-107, it is strongly contended that this rule is contrary to the principles and policy of general average, on the ground that no one has the right to attempt the preservation of the whole at the risk of an individual. The reasons given by Mr. Benecke in opposition to this doctrine, are to my mind conclusive.

The rule, that whenever an extraordinary peril is impending over the whole adventure, and the master who is the common agent of all concerned, acting in good faith and with common discretion, selects a particular part of the property at risk and destroys it, or exposes it to some special injury or risk with a view thereby to avert or mitigate the common danger, the owner is entitled to be compensated by an average contribution, is founded in the highest equity, and good policy enjoins its liberal administration in favor of the party whose property is voluntarily sacrificed.

In the case of jettison to relieve a ship laboring under a stress of weather, or to enable her to escape from a pursuing enemy, the claim for contribution could not be defeated by proof that the storm had suddenly ceased, or that the enemy's ship then far behind, was destroyed by an accidental explosion at the instant of the jettison. It would seem to be enough, that a real danger exists, that it appears to threaten the whole adventure, and that the mind of the agent acts upon the question, judges the sacrifice to be conducive to the general interest, and makes it accordingly.

Contribution is only due from the owner of a ship or cargo upon its coming to its use, consequently it is quite true to say that the common concern, or more properly speaking some part of it must be saved, but this pre-requisite to a case of average contribution has no special reference to the saving the concern from the calamity which was impending at the time of the sacrifice.

The rule of contribution, generally adopted by experienced adjusters in the settlement of general average cases, as well as the weight of authority in adjudicated cases, appears to be, that, compensation is due to the owner in general average whenever an injury of any kind results to part of the property engaged in a maritime adventure from an act out of the ordinary course of navigation, intentionally done in contemplation of injury to a part, but with intent thereby to preserve as much as possible from the evil consequences of an extraordinary peril existing at the time, and apparently threatening damage to the whole adventure.

It is necessary that the sacrifice be made by one having authority to act as agent for all concerned, as for instance the master or some one rightfully acting in his stead; it is necessary that the thing thus devoted to the common service be injured by the act of devoting it, but it is not necessary that such act should impair its prospects of safety from the impending calamity; it is enough that its prospects of safety be altered by an act not necessary to the navigation of the ship under ordinary circumstances.

It is necessary that something be ultimately saved from the adventure or voyage, and come to the hands or use of the owner, but so far from its being necessary that the saving should be effected by means of the sacrifice, or that the peril in view of which, and on account of which the sacrifice was made, should be thereby, or at all events averted, it does not appear even necessary to show that the supposed peril existed in point of fact. However manifest it may be in the event, that the sacrifice was necessary, and that independently of the sacrifice, the apprehended evil would not have occurred, the party is entitled to compensation, if in the exercise of a sound or reasonable discretion, the master voluntarily subject his property to injury for the purpose of averting or diminishing an extraordinary peril which appeared to threaten the safety of the whole adventure.

If such is the right construction, the law of average contribution leaves each party to bear the loss which results from ordinary navigation, or the direct action of extraordinary perils, but makes all concerned co-operators to the extent of their several interests, in the common fund in respect to losses arising from the voluntary devotion of any part by the common agent of the parties, to an unusual service, for the benefit of the whole, in averting or beneficially modifying, what to such agent, in the exercise of a sound reasonable discretion, appears to be a common danger.

There really seems no substantial basis for the doctrine, that, in order to found a claim for contribution, the evil must be averted at all. The sacrifice gives a claim for contribution, not strictly against the owner, but against the property intended to be benefited, and if that property survives the adventure, and comes to the use of the owner, in whole or in part, whatever its condition, whether sound or partially damaged by the shipwreck vainly sought to be avoided, or by any other means, it should contribute.

Upon the whole, I think the weight of reason agrees with what seems to me the weight of authority, that if there be a

voluntary sacrifice, made for good cause, and with a reasonable prospect of saving thereby, other property which would otherwise be lost, and this other property is saved in fact, it should contribute to the loss, whether it was saved by that or by other means. But see, *Barnard v. Adams*, 10 How. 270, 303, and *Sturges v. Cary*, 2 Curtis, C. C. 59, 66; also Parsons on Maritime Law, vol. 1, p. 288.

*Deviation to repair loss, and consequent damage.*

*Is the accidental stranding of a vessel to be deemed a voluntary or intentional stranding within the meaning of the law, when it appears that the stranding was either directly or incidentally occasioned by the intentional exposure of the vessel to extraordinary perils out of the usual course of navigation, and of the ship's duties as a common carrier?*

No case has yet determined that accidental damage, *to the risk* of which the deviation has exposed the vessel or cargo, should be contributed for in general average; and especially in the case of loss or damage by stranding, the language of the American and English cases and books is uniform, that to make a stranding a general average loss, it must be the immediate result of the act and volition of man directed toward that particular object.

An accidental stranding which was the consequence of risks incurred by deviating to repair damage occasioned by a *vis major* or *cas fortuit*, is not general average.

When however, a part of the cargo is selected from the rest to be subjected to an extraordinary peril, as by being placed in lighters, the loss of it in consequence must be contributed for yet the same principle does not apply to the ship, for the carrier is bound by the contract to expose his vessel and her furniture if necessary, though not actually to destroy them.

Though the expenses of entering a port to repair a particular average, are contributed for in England, and in America, even the wages and provisions of the crew during the deviation, it has been never held that risks, incurred by such a deviation, are assumed by all the interests; nor that, when they are different and greater than those incurred in the ordinary course of navigation for the voyage, a loss in consequence is to be contributed for; and lastly, all the cases and writers, both American and foreign agree, that, to make a loss by stranding, a general average loss, it must have been voluntary, or the immediate effect of a resolution to effect that object.

*Is the sum awarded or agreed to be paid to ships, boats, pilots etc., for bringing a ship, when at sea in distress, into a port; or, for unloading the ship and getting her off the ground when forced on shore, general average?*

It is, as also the charge of taking off anchors, cables etc., and rendering assistance generally.

Wages of people employed to guard the property during repairs, or of cutting a way for the ship through the ice when she has become frozen up in a port of distress, and all charges of a similar kind, are contributed for in general average, provided the ship put into port, in consequence either of sea damage, or to repair purposely inflicted losses.

But it must be carefully borne in mind, that none of the above charges can be allowed in general average, when the ship is obliged to put in merely in consequence of contrary winds, or for the purpose of procuring water and provisions, in such cases these expenses fall under the head of petty averages, and must be borne by the ship-owner alone.

*If goods, which are taken out into lighters for the common benefit, are thereby, or while in the lighters, lost or injured; does this generally constitute an average loss?*

It does. Lewis v. Williams, 1 Hall, 480. See also, 1 Mag, 160, Case ix. Goods were taken out of a vessel which had sprung a leak at sea, and put on board other vessels that the leak might be discovered and stopped. In consequence of this she was enabled to prosecute and complete her voyage. The goods taken out were captured; and were contributed for in general average.

But if, after the cargo is partly taken out, the ship and the cargo in her are lost, and the goods in the lighters saved, they do not contribute for the property lost, for it was not lost for their benefit, nor as a consequence of any measures taken for their advantage.

*If it be necessary for the general benefit to take out and store the cargo until the ship is repaired, and then return it, is the whole of this expense general average?*

It is, and if the goods are damaged in consequence of such removal, they are to be contributed for.

In Shelton v. Brig Mary, U. S. D. C. Mass, 5 Law Reporter, 75, it was necessary to remove the cargo in order to repair the vessel, but the cargo was so much damaged that it was also necessary to unload it for its own preservation. While on shore, part was destroyed by fire. Held, under these circumstances, that no contribution was due, as the owner could not be considered as having made a voluntary sacrifice, for the purpose of prosecuting the voyage.

In Bond v. The Superb, 1 Wallace, Jr., 355 (cited in Parsons' Maritime Law, 298), it was held that the removal of part of a

cargo of perishable fruit in a port of necessity, for the purpose of repairs, which increased an incipient decay, and hastened a partial destruction of the fruit, did not give the owner of the cargo a claim for general average.

*Is Specie held liable to contribute in general average for expenses incurred at port of distress?*

The liability to general average continues until the property has been completely separated from the rest of the cargo and from the whole adventure, so as to leave no community of interest remaining.

If the enterprise is not abandoned, and the property, although separated from the rest, is still under the control of the master of the vessel and liable to be again taken on board for the purpose of prosecuting the voyage, the common interest remains, and whatever is done for its protection is done at the common expense.

In *Nelson v. Belmont*, the cargo of a vessel being on fire, the master transferred a quantity of specie to another ship, which, by his request, conveyed him into a port of distress. He there incurred expenses in putting out the fire and repairing damages to the vessel, the specie being meantime deposited in bank. The damage was found to be such that the cargo was sold and the voyage abandoned. Held, that the specie was liable in general average for the expenses at the port of distress.\*

*When funds are raised for the common benefit, must all the interests assisted repay them?*

\* Money, bills of credit, choses in action, &c., are only excepted from contribution to a General Average loss when carried like clothes and baggage under the personal care of a passenger or seaman; and not when carried as cargo for hire, or when they are to be saved or lost like other cargo, merely from the general care and conduct of the persons controlling and managing the vessel. 2 Arnould, 919; 1 Phillips, 2d Ed. 172; 2 Phillips, 3d Ed. 152; 3 East, 375; Park on Ins., 211; Millar on Ins., 214; 4 Bing, 119; Stevens & Benecke, 206, 248; Emerigon on Ins., Meredith's Ed. 402, 407. Note to 3d Ed.

They must. Also, all losses incurred necessarily in raising the funds, as damages, premiums, extra interest, brokerage, &c.

*If a ship is wrecked, and the master forward the goods to the port of destination, is the expense of doing so, included in the average contribution?*

When a vessel is condemned and sold at an intermediate port, or is dashed against rocks or land, and broken, or otherwise rendered useless by violence and fracture, the community of interest cannot longer be considered to exist; therefore, the charges become special. The sending forward of the cargo being the means of earning freight, the expense falls upon that interest as a special charge.

*If the expense is greater than the original freight, is the excess included in the contribution?*

No. The expense being incurred for the benefit of the cargo, it must bear the extra freight as a special charge.

*How is the extra freight to be apportioned?*

According to bulk, and in proportion as the whole freight bears to the excess, thus:—

| <i>Freight for Bill of Lading,*</i> |   |   |                                   |          |
|-------------------------------------|---|---|-----------------------------------|----------|
| <i>On 1 Case,</i>                   | - | - | \$4.00 <i>pays extra freight,</i> | - \$1.00 |
| <i>1 Cask,</i>                      | - | - | 2.50 <i>do.</i>                   | - 0.63   |
| <i>1 Bbl.,</i>                      | - | - | 1.25 <i>do.</i>                   | - 0.31   |
| <i>1 Box,</i>                       | - | - | 0.25 <i>do.</i>                   | - 0.06   |
|                                     |   |   | <hr/>                             | <hr/>    |
|                                     |   |   | \$8.00                            | \$2.00   |

*In case the expense of forwarding does not amount to the original freight, to whom does the surplus freight belong?*

To the ship-owner, who is responsible to that extent to his underwriters on freight as so much salvage received by him for their account; and accordingly to be deducted in settlement of the loss under the policies.

*Is the salvage of freight liable to contribute to the general charges?*

It is. Upon one half only, the other part being considered consumed by the wages and provisions to the ship's company.

*When the ship is stranded and the goods are forwarded to the nearest port, which happens to be the destination of the ship, is the expense of doing so, included in the average contribution?*

The lightering of the cargo when stranded, to enable the

\* The expense of forwarding cargo must be paid by the insurers of freight, to the full extent of *that interest at risk, and by the insurer of cargo if the new freight exceed the old.* *Mars to Mar 1822.*

vessel to float again, and at the same time place the cargo in better safety, is considered by Adjusters and Underwriters of New York, a legitimate item for average contribution. The same charge in Boston, according to the rule adopted there, is chargeable to the earnings of the vessel.

But if the vessel is wrecked and rendered useless by the stranding, the sending forward the cargo, as we have seen, is a special charge to the interest benefited.

*If the ship is lost or rightfully condemned, and the master transships the cargo, is the expense of his necessary detention, or traveling to an adjacent port to procure a vessel for that purpose, to be included in the contribution?*

This expense, as also a reasonable compensation for his time and labor, ought to be charged to the cargo transhipped.

But if the master's detention is caused by the ship, as well as the cargo, the expense ought to be apportioned.

*If the voyage is abandoned, ought any part of the expense of delay or traveling to consult the ship-owner or underwriter upon the propriety of abandoning the voyage or repairing the ship, to be charged to the cargo?*

No part of this expense can be rightfully charged to the cargo if the voyage is abandoned; and probably not if the voyage is completed.

The Adjusters in New York, usually allow the wages of the master from the date of leaving with funds and documents, until his arrival at the home port; as also, the necessary deter-

tion afterwards in explaining papers, and aiding the adjusters in the settlement of loss, to pass as a common charge.

*Judge Marvin*, in the case of Roberts, et. al. v. Ocean Star and Cargo, says:—"In a few instances in this Court (U. S. D. C., Florida), the master's passage money home has crept into the accounts, and has been allowed to pass as a common charge; but, no part of this expense can be rightfully charged to the cargo. The cargo is not benefited by the master's going home."

But see *Black v. McGilvery*, 38 Maine R. 287; *Duncan v. Reed*, 39 id. 415; *Lawrence v. New Bedford Ins. Co.*, 2 Story 471; *Marvin on Wreck and Salvage*, page 27.

*How is the loss or damage in efforts made to get a stranded ship afloat, usually apportioned?\**

If loss or damage happens to the anchors, chains, hawsers or other parts of the ship, in consequence of efforts made to get a stranded ship afloat with the cargo or a part thereof in, or with a view to the common benefit, such loss or damage, if the ship is again set afloat, should be apportioned upon ship and cargo. But if the ship is not again set afloat, the loss or damage should rest where it falls.

If, the ship being actually lost, the blocks, falls, ropes or other parts of the ship are lost or damaged in getting out the cargo, such loss or damage, estimated with reference to the actual value of the articles as detached materials, ought to be made good to the ship by the cargo saved.

If goods, put into a wrecking vessel to lighten the ship off the reef, are lost or damaged, the ship, if got off, should contribute to the loss or damage.

If lost or damaged by the fault of the wrecking vessel, the wrecker should make good the loss or damage, though his liability, without payment, will not exonerate the ship for its con-

\* Where a vessel is stranded during a voyage, and thereby the vessel, cargo and freight are exposed to a common peril, and expenses are voluntarily incurred to relieve the vessel, cargo and freight therefrom, with a view to complete the adventure in which they are engaged, and by one continuous operation all the subjects are relieved from the common peril, and the common adventure is completed by the arrival of the vessel and cargo at the port of destination, whereby freight

tributive share. Per *Marvin*, J., case of Ship Ocean Star and Cargo. U. S. D. C., Florida. Key West, 1861.

*If sails, ropes and other materials, are cut up and used at sea for the purpose of stopping a leak occasioned by storm, are they proper subjects of general average?*

They are; for they are required for the general safety; so, also, where like materials are used to raise a jury-mast, or for extraordinary purposes of a similar nature which the general safety may require, are also proper subjects of general average.

*As a general rule, are not all sacrifices for the common benefit, made good by general average contribution?*

All damage purposely done to the vessel, to preserve the whole from impending danger, is general average; such as the cutting away of masts, rigging &c., when the ship is in distress; the cutting or slipping from anchors to avoid running ashore or being run foul of, or for the purpose of getting clear of another vessel; and, in general, the diversion of stores or any materials of a ship from their original and intended purpose to some other use necessary but not contemplated, brings them within the class of general average. So, sails used to cover the deck or hatches, after an accident, to prevent water going below, or hauled under the ship's bottom to stop leaks there; so, a hawser or ropes employed to support a mast or to secure a rudder; so, even, coils of rope, being the ship's stores, used on any extraordinary emergency for the general safety of ship, cargo and freight; so, ropes and other articles used for is earned, the charges so incurred, for the benefit of all interests, are strictly and purely General Average charges. *Moran v. Jones*, 7 El. & Bl. 523; *Brown v. Bank of United States*, 4 Whart. 391; *Hopfner v. New York Firemen Ins. Co.*, 11 Johns. 85; *Williams v. Suffolk Ins. Co.*, 3 Lummer, 519; *Wilkoff and others v. Alliance Ins. Co.*, 14 Gray's Rep. 318. Note to 2d Ed.

chocking and securing a cargo of iron or other heavy goods which has broken adrift in the hold and endangers the general safety. But, if, when owing to straining, the decks have become leaky, and to protect the cargo below from drip, sails are taken into the hold to cover the perishable merchandise and are thus injured or destroyed, the case is different; the sole object of the sails being so used to cover the cargo and prevent injury to it, and the loss or damage received by them is applicable to the cargo solely.

If new articles are cut up and used for general average purposes, such as sails which have never been set, or ropes which have never been uncoiled, the loss to the ship-owner should be made good without the deduction of a third, new for old.

But where uncoiled rope has been taken for temporary repairs, &c., it will generally be considered as evidence of its not being entirely new, or of the original quantity. And so, all other articles charged to general average net, are usually carefully investigated by underwriters and others interested, as the inference is against their being new.

*Are gratuities to seamen by the master, in time of danger, in order to encourage them to do their duty, proper subjects for contribution?*

The ordinary crew of a ship are not to be paid an additional sum for their extraordinary exertions, because it is their bounden duty to give their utmost efforts for the preservation of the ship and the prosecution of the voyage; and to reward men for doing their plain duty is an immoral act having a very bad tendency. If once seamen found that in the hour of peril they were able to strike a bargain with the master for their services, the very worst consequences would ensue.

There are a few exceptional cases, however, where the judg-

ment of the adjuster must decide whether the circumstances bear out some additional payment to the crew:—as, for instance, when a ship in a disabled condition puts into a port where leaks cannot be stopped, or where repairs cannot be effected without very heavy expenses, and it becomes highly desirable to reach, if possible, the place of destination, yet the Consul is of opinion that the ship's company cannot be forced to go to sea again in the vessel's then condition; in such a case, if the offer of additional pay, and an allowance of additional victuals and spirits prevail with the crew to proceed on the voyage, and to redouble their exertions, the successful result of such an arrangement would justify the proceedings, and the parties interested would scarcely object to a payment productive of so much advantage to themselves, and only questionable on more theoretical considerations.

But, as a general rule, gratuities to sailors, paid or promised, to increase their exertions during peril, do not constitute an average loss.

*Are passengers' services contributed for?*

If a ship having passengers on board, spring a leak, or from some other cause require assistance by additional hands, and the passengers are employed to pump and aid in navigating the vessel, the sums paid to them for their labor are to be treated as if the aid given were that of strangers.

*Under what circumstances, and to what extent is the expense of getting off an accidentally stranded ship to be contributed for?*

The expense of discharging the cargo to get a vessel afloat that has been accidentally stranded, and that of re-loading the cargo, and the other expenses requisite to enable the vessel to proceed on the voyage, except those of making repairs, are in practice brought into general average, where the vessel, after being got off, proceeds with the same cargo.\* [See page 181, Note.]

*But, in case the lightening of the vessel does not make her float, and other means are necessarily resorted to for this purpose, such as buoying the vessel with casks, or making a channel, are the expenses incurred on the vessel after the cargo is landed, to be contributed for?*

Mr. Phillips, in his Treatise on Insurance, § 1312, says, "after the cargo is landed, these expenses are incurred for the benefit of the vessel, and are not any more properly the subject of general contribution than the repairs of the vessel."

There is no doubt that when the interests are once undeniably separated, the charges incurred on each interest are special to that interest benefited; but it is denied by some experienced Adjusters, that the general interest is dissolved by the removal of the cargo to a place of safety. They argue, that if such is the result, no ship-master will permit the whole cargo to be removed from the vessel's hold, but at the prejudice of the owner or consignee of the cargo, will reserve a portion, if only a small part, to participate in the risk, so that a community of interest shall remain intact to contribute to the whole expense.

That the ship-owner is responsible for a wrongful act of the master, is not to be denied; but equally true is it, that he has the right, in the exercise of his judgment, to retain a part, or the whole of the cargo, until the result is manifest; and I think no such inducement should be allowed to warp his judgment.

\* If a ship and cargo are stranded, and at high water submerged, and abandoned to the under-writers, who decline to accept the abandonment, but raise the ship, take her to her port of destination, being the most convenient port for repairs, and deliver her cargo to the consignees, the cost of raising the ship and bringing her in is not a General Average charge. *Hiscock & Others v. Assurance Ass. Co.*, 14 Grays Rep. 318. Note to 2d Ed.

*Where necessary repairs to complete the adventure cannot be made at the port of refuge, or without very considerable delay, and to avoid which, and heavy expenses for storage, commissions etc., the cargo is reshipped in other vessels, and the original ship, thus lightened, is temporarily or partially repaired, to enable her to reach her port of destination, is the new freight a subject for general average contribution, or is it a special charge to freight?*

In equity, the *new freight*, standing in the place of the expenses of a voyage of necessity of the ship to another port for repairs, or, in the place of the incidental expenses of delay to rent at the port of refuge, should be contributed for in general average.

I am, however, unable to find any decisions expressly affirming or disaffirming this doctrine. And the practice with adjusters is not uniform on this point.

'But, I apprehend, where the reshipment was done with the view of, and resulted in a saving to, the general interest, there can be no objection to making the new freight a common charge in contribution.'

*What is the rule with regard to consequential damages?*

All the immediate and direct consequences of a sacrifice, although these consequences were neither intended nor beneficial, are to be taken as entering into and forming a part of the sacrifice; and the value of them is to be added to the value of the original and intended sacrifice, to ascertain the whole sum which is to be averaged as a loss for the common benefit.

*When a ship is in peril so imminent that her total loss is inevi-*

*table to all appearance, is a voluntary stranding made with a view of saving the ship and her cargo from total destruction to be contributed for, in the event of any thing being thereby saved?*

This is a question upon which there has been a great diversity of opinion. Many contend that where the destruction is inevitable the stranding cannot be *voluntary* in the sense of the rule, and that the ship instead of being sacrificed by exposure to a greater peril, is in fact submitted to a less, and that this is done in the course of ordinary duty and so not an act of sacrificing at all.

Judge Parsons, in his valuable Treatise on the Maritime Law, vol. 1, page 291, states the rule of law thus: "If a ship must inevitably be cast upon a shore, and all that the master does is to select a place, a time, and a mode of stranding, this is not a voluntary sacrifice, and, therefore, not an average loss. But if the master has a substantial and valuable chance of saving his ship, although this chance may not amount to a probability, and voluntarily throws this chance away in order to make sure of saving his cargo, the cargo must contribute to repay the loss." And he adds—"We cannot doubt that this must be the rule, although, it may often be difficult to determine which side of the rule a case falls."

It was argued by counsel in the case of the Ship "Brutus," "If the danger is not so great that the loss is otherwise inevitable, where is the right of the master to anticipate or hasten the destruction of any part of the adventure? Does a master ever make (rightly) a jettison, cut away a mast or run his ship ashore, unless the loss at the time he resolves on the measure is inevitable unless he resorts to it? Is the master to throw over cargo, or mutilate his ship out of mere apprehension? Does he ever do it unless all reasonable hope of otherwise saving the adventure is gone? He is not to be justified in a fear from slight causes, nor in anticipating that total destruction to a part which awaits the whole adventure, unless to all human judgment safety from any other measure is hopeless. When.

the ship has been overcome in her struggle with ocean and tempest, and is in danger of foundering, and when lightening her is the only measure to avert this otherwise certain peril, then first arises the right to throw over the cargo; it is a right only born at the last degree of distress in his ship. If it can be shewn that the vessel was not in much danger, that she would not in all human judgment sink unless relieved, the jettison would be unwarranted, so too in any case of voluntary stranding, if it could be shewn, that, by any means in the master's power, by holding on to anchors, or by making a pressing sail, he could avoid the danger, he is not warranted in beaching his ship. The peril, therefore, being in its nature *inevitable*, so far from being a reason to prevent a contribution, is on the contrary essential to it. The greater the danger and the more inevitable by any other means than by measures to anticipate its action, the more justifiable is the act of courage thus anticipating it, and the more rightful the demand of contribution."

This question, however, was fully settled by the Supreme Court of the United States, in December Term, 1850, in the case of the Ship "Brutus." (*Barnard v. Adams*, 10 Howard 270, 302.)

Mr. Justice *Grier*, in delivering the opinion of the Court, said:—"The Ship "Brutus" was lying at anchor at the usual place of mooring vessels in the outer roads of Buenos Ayres, about seven miles from the shore. The width of the river at that place, between Buenos Ayres and Colonia on the opposite shore, is about fifteen miles. The Brutus had taken her cargo on board for New York, consisting of skins, dry hides, horses and jerked beef. The master was on shore, and she was in charge of the first mate, with a crew consisting of twelve persons in all. On the 7th a gale had commenced, which on the 8th had become dangerous. About four o'clock the next morning, the ship began to drag her anchors, and the small lower anchor was let go. About nine o'clock in the evening, the gale increasing, the best bower anchor parted with a loud report. About ten o'clock, the small bower parted, and

the ship commenced drifting broadside with the wind and waves. Endeavors were then made, to get the ship before the wind, which failed on account of the chains keeping her broadside to the sea, which was making a breach over her fore and aft. The chains were then slipped and the vessel got before the wind, two men were put to the wheel, and one man to the lead, and it was determined 'to run the ship ashore for the preservation of the cargo and the lives of the crew.' It was now about eleven o'clock at night, when the ship was got before the wind and under command of the helm. The shore next to Buenos Ayres, towards which the ship had been drifting, had banks and shallows extending out some three or four miles. If the vessel had been driven on these by the tempest, she would have been wrecked and lost together with the cargo and crew. On the Colonia side of the river, were sunken rocks several miles from the shore. 'For the purpose of saving the cargo and crew any how, and possibly the vessel,' she was steered up the river, inclining a little towards the Buenos Ayres side, with the intention of running her on shore at a convenient place. After they had proceeded up the river, about ten miles, the mate discovered from the flashes of lightning, that the vessel was approaching a point called St. Isidro, off which he perceived something black, which he supposed to be rocks, and being afraid, or 'thinking it impossible to get by' this point without being wrecked and lost, he directed the course of the vessel to be changed towards the shore, where he had seen what he supposed to be a house, but which turned out to be a large tree. About midnight the vessel struck the beach and the rudder was knocked away. The fore-sail was then hauled up, but the stay-sail was let remain to keep her head straight, and she continued to work herself up until daylight. The place where she was stranded was a level beach about 200 yards above ordinary low water mark. The ship was not wrecked or broken up, though somewhat damaged, and the cargo was not injured. The master chartered the Bark 'Serene,' and transferred the cargo to her. But it was found that, with

the means to be obtained in that vicinity it would have cost more than the ship was worth to get her off the beach. She was therefore sold. The 'Serene' afterwards arrived safely at New York, under command of Captain Adams, former master of the 'Brutus.' In transhipping the jerked beef from the 'Brutus' to the 'Serene', a portion of it got wet, and when it arrived at the port of New York, it was all found to be worthless. \* \* \* \* \*

"It cannot be denied by any one who will carefully compare this case with that of the 'Hope' (13 Peters, 331), unanimously decided by this court, and the cases of Caze v. Reilly (3 Wash. C. C. R. 298), Sims v. Gurney, (4 Binney 413), and Gray v. Waln (2 Serg. & R. 229), which have received the 'unqualified assent' of this Court, that whatever distinctions may be taken as to the accidents and circumstances of these cases, they do not materially or substantially differ from the present, so far as the point now under consideration is concerned; and that we are now called upon to reconsider and overrule the doctrine established by those cases. But however they may appear to be contrary to certain abstract propositions stated by some text writers on this subject in England, and a case or two in this country, the policy and propriety of overruling our own and the three other decisions which have received our 'unanimous approval', even if we are not now satisfied with their correctness, may well be doubted. There are few cases to be found in the books, which have been more thoroughly, laboriously, and ably investigated, by the most learned counsel and eminent judges. In questions involving so much doubt and difficulty, it is of more importance to the mercantile community, that the law be settled and litigation ended, than *how* it is settled. No decision of a question depending on such nice and subtle reasoning will meet the approbation of every mind, and if the cases we have mentioned, have failed of this effect, it may well be doubted, if any reasons which could be given for overruling them would prove more successful. \* \* \* \* \* The law of general average has its foundation in equity. The prin-

tiple, that, 'what is given for the general benefit of all, shall be made good by the contribution of all,' is recommended not only by its equity, but also by its policy, because it encourages the owner to throw away his property without hesitation, in time of need.

"In order to constitute a case for general average, three things must concur. 1st. A common danger; a danger in which ship, cargo and crew all participate; a danger imminent, and apparently 'inevitable' except by voluntarily incurring the loss of a portion of the whole to save the remainder.

"2d. There must be a voluntary jettison, *jactus*, or casting away of some portion of the joint concern for the purpose of avoiding this imminent peril, *periculi imminentes evitandi causa*, or, in other words, a transfer of the peril from the whole to a portion of the whole.

"3d. The attempt to avoid the imminent common peril must be successful. It is evident from these propositions, that the assertion so much relied on in the argument, viz:—'That if the peril be inevitable there can be no contribution,' is a mere truism; as the hypothesis of the case requires that the common peril though imminent, shall be successfully avoided. Those who urge it must therefore mean something else. And it seems when more carefully stated, to be this:— 'That if the common peril was of such nature, that the *jactus* or thing cast away to save the rest, would have perished anyhow, or perished 'inevitably,' even if it had not been selected to suffer in place of the whole, there can be no contribution.' If this be the meaning of this proposition, and we can discover no other, it is a denial for the whole doctrine upon which the claim for general average has its foundation. For the master of the ship would not be justified in casting a part of the cargo into the sea, or slipping his anchor, or cutting away his masts, or stranding his vessel, unless compelled to do it by the necessity of the case, in order to save both ship and cargo, or one of them, from an imminent peril which threatened their common destruction. The neces-

sity of the case must compel him to choose between the loss of the whole and part; but however metaphysicians may stumble at the assertion, it is this forced choice, which is necessary to justify the master in making a sacrifice, (as it is called) of any part for the whole. Hence, the answer of every master of a vessel when examined, will be, 'I considered the destruction of both ship and cargo "inevitable" unless I had thrown away what I did.' 'The goods thrown away would have gone to the bottom anyhow.' If the case does not show that the jettison was 'indispensable' in order to escape the common peril, the master would himself be liable for the loss consequent therefrom. It is for this reason, that the ordinances of Marseilles, require that the master should have a consultation with the supercargo and crew, as to the absolute necessity of the measure, and as evidence that it was not done through the vain fears, cowardice, or imprudence of the master. But the right to contribution was not made to depend on any real or presumed intention to destroy the thing cast away, but on the fact that it has been selected to suffer the peril in place of the whole, that the remainder may be saved. The anchor lost by voluntarily slipping the cable may be recovered, the goods jettisoned may float to the shore and be saved, and yet if the anchor or goods had not been cast away, they would have been 'inevitably' lost, and there would have been a total loss of both ship and cargo. Take the case of *Caze v. Reilly*. A vessel is completely surrounded by the enemy's cruisers. It is impossible to save both ship and cargo from capture and a total loss. A part or the whole of the cargo is thrown overboard, and thus the vessel escapes. This is an admitted case for contribution. And is no answer to the claim of the owners, to say, 'Your cargo was "inevitably" lost; as it was situated it was worthless, and consequently you sacrifice nothing for the common benefit. Besides a portion of it floated on shore and was saved from capture, or was fished from the bottom without sustaining much injury; the throwing it overboard was the best thing that could be done for it under the

circumstances, as without that it would have been 'inevitably lost.' But suppose, as in the case referred to, the ship cannot be saved by casting the cargo into the sea, but the cargo which is of far greater value, can be saved by casting the vessel on the land, or stranding her. Is it any answer to her claim for contribution, to say, that her loss was 'inevitable', she was in a better situation on the beach, than in the hands of the enemy, or at the bottom of the sea, or wrecked upon rocks, and therefore there was no such sacrifice as would entitle her to contribution. We cannot comprehend why this argument should have no weight in the first case (which is an admitted case of contribution in all the books), and yet that it should be held as a conclusive obstacle to the recovery in the latter. The replication to this objection in the first instance, and the conclusive one, is 'the vessel and cargo were in a common peril, where both or all could not be saved; the vessel alone, or the vessel and part of the cargo has been saved, by casting the loss upon the cargo, and this constitutes the very hypothesis on which the doctrine of general average rests.' Why then should there be a difference in principle, where the cargo is damaged or lost, by being cast into the sea, and the ship saved; and the case, where the ship is damaged or lost by a voluntary stranding, or by being cast on the land, and the cargo saved, is a question which has never yet been satisfactorily answered. In fact, we do not understand the counsel to contend that the *Brutus* was not entitled to contribution, because she could not be got afloat at a less cost than her value. The principle on which the counsel relied, is that enunciated in the opinion of the court in *Walker v. United States*, 11 Serg. and R. 61. 'It is not enough,' says the learned Judge, 'that there be a deliberate intent to do an act which may or may not lead to a loss; there must be a deliberate purpose to sacrifice the thing at all events, or at the very least to put it in a situation in which the danger of eventual destruction would be increased.'

\* \* \* \* \*

"The fact that goods thrown overboard are in no worse or

even a better condition as to chances of safety than if they had remained on board, or that the stranded vessel is in a better condition than if she had been wrecked or sunk, cannot affect the right to contribution of that part which was selected to suffer in place of the whole. \* \* \* \* Let us briefly compare the facts of this case with the principles we have stated, and inquire, 1st—What was the common peril, and 2d—Was any portion of the joint adventure saved from it, by the transfer of the risk or loss to another.

"The common peril, which in this case was sought to be avoided, was shipwreck, or the destruction of vessel, cargo and crew. The ship lay at anchor—she was assailed by a violent tempest—her cables broken—her anchors gone; and she was being driven by the force of the gale broadside upon the shallows extending three miles out from the shore at Buenos Ayres. In order to save the cargo and crew, it is determined to put on sail and run up the river to find a safe place to strand the vessel. They proceed ten miles up the river, when they encounter another peril at Point St. Isidro. To avoid being wrecked on the rocks the course of the vessel is immediately changed, and she is steered directly for the shore, and run upon a sandy beach where she is left high and dry by the tide. The cargo is saved without injury, but the ship is on the land, where she is comparatively valueless, on account of the expense which must be incurred to replace her in her element. By the will and directions of the master, she has become the victim, and borne the loss, that the cargo might escape from the common peril. It is true she has not been wrecked or lost, as she inevitably would, had she been driven on the flats, by the tempest at Buenos Ayres, or been foundered on the rocks off Point St Isidro, but she has voluntarily gone on shore, which was death to her, while it brought safety to the cargo. *And we are of opinion that she has the same right to demand contribution, that the owners of the cargo would have had against her, had it been cast into the sea to insure her safety.* There is therefore no error in the instruction given by the Court below on this point. 2d—The second and

third instructions excepted to, *have reference to the place at which the goods are to be valued for the purpose of adjusting the general average.*

"The adventure was continued notwithstanding the disaster, and terminated at New York. The goods were not returned to the shippers, and consequently no contribution could be collected at Buenos Ayres. The fact that the Brutus was left on the strand and the adventure continued till the cargo reached its destination in another vessel cannot affect the case. The place where average shall be stated is always dependent, more or less, on accidental circumstances, affecting not the technical termination of the voyage, but the actual and practical closing of the adventure. We see nothing in the circumstances to take this case out of the general rule that contribution should be assessed on the value at the home port.

"3d.—The third exception relates to the allowance of the wages of the crew after the ship was stranded. But as they were employed as mariners and quasi-saviors of the cargo, laboring for the joint benefit of the adventure, we think the exception is not supported. Their services were essential to the entire saving of the cargo. Their duties did not cease with the stranding, and they were entitled to wages while their services were required for that purpose. If the same services had been rendered by strangers, the expense would have been properly charged as a result of the disaster, in stating the average. That the same services were rendered by the crew, after the Brutus was stranded, and the voyage as to them technically broken up, cannot affect the case. Even if their obligation to the ship had ceased, still their services to vessel and cargo entitle them to wages and support as a general charge.

"4th—*The two and a half per cent.* allowed for collecting the general average, rests upon the usage and custom of merchants and average brokers. It is a duty arising out of the unforeseen disaster and resulting directly from it. Usually there are contributions to be paid out as well as received by the ship-owner. It is a troublesome duty not embraced in their obligation as

mere carriers. The usage is therefore not unreasonable. The objection, that it is paying the owners for merely collecting their own debt, is founded on the accidents or peculiar circumstances of the case, and does not affect the general principle, on which this usage is based."

This important decision, therefore, seems to establish the law, that, where the situation of the ship is such, that the power of voluntary action remains, so that notwithstanding the fury of the elements, the point of stranding may be selected, and benefit results from the change in the course of the ship; or if the place where she actually takes ground is of such a nature as to involve less danger to the cargo, than that to which she was drifting before her course was altered, it constitutes a claim for contribution.

This decision of Mr. Justice *Grier* (*Barnard v. Adams*, 10 Howard 270), in connection with the elaborate investigation of Mr. Justice *Story*, in the case of *Coh. Ins. Co. v. Ashby*, 13 Peters 381; also settles a question on which there has been some conflict of authority, viz.: Whether there is to be contribution if the vessel is, by the stranding, totally lost?

It may now be considered as the settled doctrine, that the ultimate loss of the ship makes no difference in regard to the liability of the owners of the cargo to contribute.

## CHAPTER XII.

### ADJUSTMENT OF GENERAL AVERAGE AND CONTRIBUTION.

The leading principle of general average contribution, to whatever kind of loss it may be applied, is this:—*That all the parties interested in the adventure, for the benefit of which the loss was incurred, should be sufferers by the loss in exact proportion to the extent of their interests, but no further;* and this object can only be attained when the party whose property has been sacrificed, whose money has been disbursed, or whose credit has been pledged for the common benefit, is placed, by the result of the adjustment, exactly in the same position he would have stood in had the sacrifice been made, the expense incurred, or the credit pledged, not by himself, but by some other of his co-adventurers. This is the universal principle of general average contribution, whether the loss arose from sacrifices, expenditures, or a sale of goods for the common benefit. Arnould on Ins. § 921.\*

*What is the rule for estimating the value of the ship for the purpose of general average?*

\* It is a rule applicable to all adjustments, that "every thing that is contributed for, must be taken into account." *Note to 2d Ed.*

The true value of the ship for contribution, is the amount that her hull, masts, yards, sails, rigging and stores would produce after the sacrifice is made, with the addition of the amount made good by the general average contribution. Her contributory value, in fact, is her worth to the owners in the state in which she arrives.

|                                      |   |   |   |               |
|--------------------------------------|---|---|---|---------------|
| <i>Value of Ship, after repairs,</i> | - | - | - | \$40,000      |
| <i>Less, gross repairs.</i>          | - | - | - | 10,000        |
|                                      |   |   |   | <u>30,000</u> |
| <i>Add, amount contributed for,</i>  | - | - | - | 2,500         |
|                                      |   |   |   | <u>32,500</u> |

*What is the rule for ascertaining the contributory value of Freight?*

Only the freight earned pays (Lee v. Grinnell, 5 Duer 400, 431); and if that be only a *pro rata* freight, that only contributes (The Nathaniel Hooper, 3 Sumner 542; Magrath v. Church, 1 Caines 196); and from the freight all expenses necessary for earning it, should be first deducted.

Whatever freight the ship loses by jettison of the goods, or by any sacrifice, is, of course, to be contributed for. (Nelson v. Belmont, 5 Duer 310, 322.) So if she be voluntarily stranded to save the cargo, and being lost cannot carry it on and earn her freight, this is a part of the sacrifice. (Col. Ins. Co. v. Ashby, 13 Peters 331, 344.) When freight is entitled to contribution, the value is the gross freight lost by the sacrifice. The net freight only on the goods saved and carried, is called upon to contribute. This net freight is usually ascertained by deducting a certain proportion from the gross freight; as one

• Examples, showing contributory value of freight in certain cases. Gross freight estimated at Seven.

Int.—Where a ~~settlement~~ has been made. Freight on goods delivered, . . . . . \$30000 1.2 1,500  
Freight contributed for . . . . . 1,000

2nd.—Where other assortments or expenditures have been made. Freight on goods delivered. \$25000. 1-3 \$25,000.

3rd.—When the vessel is totally lost, but cargo delivered. Freight, gross \$5000  
    of expense of delivering cargo by other vessels. 4000 1000 1.2 2000

Where the expenses of delivering cargo exceed the original freight, there is no contribution by freight, but the excess is chargeable to the cargo and apportioned according to bulk.

half, one third, or one fourth. In most commercial ports some rule prevails, which is sanctioned by general usage there. The practice in *New York*, has been to ascertain the contributory value of freight by deducting one half of the gross amount; in *Massachusetts*, by deducting one third; in *Maine*, by deducting one third; in *Maryland*, by deducting one third; in *Virginia*, by deducting one half; in *Louisiana*, by deducting one third; in *Alabama*, by deducting one half; in *Pennsylvania*, by deducting one third; in *Georgia*, by deducting one half; in *Texas*, by deducting one half; in *San Francisco*, by deducting one half; in *Havre, France*, one half is deducted as in *New York*; in *England*, the gross freight, including prime, less wages and port charges, contributes.

In *Mutual Safety Ins. Co. v. Cargo of the Ship George Olcott*, Adm. 157, it was held, that the freight should contribute at its gross value, deducting therefrom all necessary expenses incurred, if any, subsequent to the wreck. If there is a charter-party, and freight is to be paid for the round voyage out and home, and the principal object of the voyage is to obtain a return cargo, if a loss occurs on the outward voyage, the freight for the round voyage contributes. *Shelton v. Brig Mary*, U. S. D. C., Mass., 5 Law Reporter 75.

Charter parties are generally worded, so much to be considered earned upon the delivery of the *outward* cargo, and the balance on the delivery of the *homeward* cargo. If no agreement or division of the charter is thus made in the written instrument, it is the custom of Adjusters in *New York*, to estimate the amount at risk at the time, and which is usually commuted to be, one half on each passage.

The decision quoted above, we must, therefore, be allowed to dissent from. It is a plain rule in general average matters, that what is contributed for, must contribute. A vessel (for example) is chartered for a round sum for a voyage "out and home;" as is usual, freight is taken on board for other parties than the charterers—in the course of the outward voyage she is voluntarily stranded and becomes a total loss. The vessel is

contributed for—and as we have seen in a previous case, the freight is also entitled to be contributed for. The amount of freight to be made good according to the rule cited, would be the whole charter "out and home," and in carrying it out, objections would be met from the shippers of cargo, denying the right of contribution from them for an amount greater than the agreed freight upon their goods. Their argument would be, why charge us for \$100, when, had the vessel earned freight, you would have received but \$50. The lesser sum only was at risk, and in our opinion they would be sustained.

The sum at *risk*, is to contribute or be contributed for, as the case may be.

*How is the contributory value of Cargo ascertained?*

When the average is adjusted at the port of discharge, the practice is, to take the actual value of the cargo at the market price, stripped of all the charges attached to it, as freight, duty and landing charges. And if a jettison has taken place, then the estimate proceeds of the goods jettisoned, taken in like manner, should be added to the net value of the cargo saved. The goods must contribute, according to their value, in the state in which they arrive at that place. The same rule is to be followed under similar circumstances for disbursements, if the goods arrive in a sound state, or if they were diminished in value by internal decay, or external damage, previous to the period at which the disbursements were made. But, if damaged goods are sold at the intermediate place to prevent their further destruction, the net amount for which they were sold at that place, after deducting their special charges, will be the sum for which they must contribute to general average.

The value of the cargo, in fact, is, what it has produced, or

would produce, at as nearly as possible the time of its arrival. If it be actually sold, there can be no truer value given for contribution, than the net proceeds of the sale—that is, the gross amount stripped of freight, duty and landing charges.

A few Adjusters of Averages, are in the habit of deducting from the gross proceeds of cargo when ascertaining its contributory value, "Commissions" (if consigned) in addition to the landing charges before enumerated. It is wrong to do so, for this expense is incurred after the landing and sale of the goods; and a sale is not essential in this case—See Stevens & Benecke (1833), page 208, note. There is another reason why they should not be deducted, which ought to be conclusive, it rests upon equity, the foundation of all general average rules. Take for example—two merchants have each 100 bbls. flour, and which are liable to contribute to the average—one lot is consigned, and the other is for account, from the former the commissions is deducted, and from the latter, it is not—it is easy to perceive that 100 bbls. pays a lesser share of the average than the other, which is certainly unjust.

If the goods are not sold, an estimate must be formed of their value, and they must be treated in the same manner as if they had been really sold. This is called a *pro forma* account-sale, of which the following is an illustration:—

*Gross wholesale value in New York, and in the condition landed, of the goods marked and numbered as follows, viz.:*

| Value,                                 | \$ |
|--|----|
| <i>— per cent., discount for cash,</i> | —  |
| <i>CASH VALUE,</i>                     | \$ |

## CHARGES (to be deducted).

Freight, per Bill Lading, - - - - - \$

Import duty, - - - - - \$

Less, return for damage, - - - - -

Net duty paid, - - - - -

Landing Charges, cartage, labor, storage &c., actually paid to place the goods in the possession of the Consignee or his Agent, in New York,

NET PROCEEDS, - - - - - \$  
- - - - -

The following will serve as an illustration for ascertaining the contributory value, case of jettison.

Gross wholesale value in New York, of goods originally shipped per —, not delivered, marked and numbered as follows, viz.:

## Mark &amp; No.

A & B, 49. 1 Bale Cloth, - - - - - \$2,500.00  
5 per cent. discount for Cash, - - - - - 125.00

CASH VALUE, - - - - - \$2,375.00

## CHARGES (to be deducted.)

Freight, due per bill of lading, not paid, - - - \$5.00

Duty, that would have been paid had goods arrived, - - - - - 200.00

Landing Charges, cartage, labor, storage &c., that would have been paid to put the goods in possession of consignee or his agent in New York, had they arrived, - - - 55.00 260.00

NET VALUE, - - - - - \$2,115.00  
- - - - -

*If the goods jettisoned, would have arrived in a damaged condition, is the diminished value to be taken as the contributory value?*

If the goods lost were such, that if not sacrificed, they would certainly have arrived in a damaged state and with diminished value; this diminished value should be taken as that for which contribution is made. But this is true only where such diminution in value is certain; where there is only a possibility, or a mere probability of it, the value at the time of the loss is to be taken. *Rogers v. Mechanics' Ins. Co.*, 1 Story 603, 609.

*If goods jettisoned, are afterwards recovered, what is to be contributed for?*

If goods are jettisoned, and afterwards recovered, not their whole value, but only so much thereof as is lost by the jettison and damage thence arising, added to the expense of recovering them, is to be contributed for. *Parsons on Maritime Law*, 322.

Goods jettisoned still belong to the owner, and a finder of them acquires no title, except a lien on them for salvage which may be decreed in admiralty. Or may be satisfied by arbitrament or compromise.

*How do jewels, bullion and bank bills contribute?*

Judge Parsons says—"The books raise a question which has not occurred in practice, whether goods of great value, as jewels, for example, are to be contributed for at their full value,

if jettisoned in ignorance of their value. We should say that merely this ignorance can make no difference; but if they were cast over because of this ignorance, and could have been, and would have been saved had their value been known, and there was any thing in the usage of merchants, or in the nature of the goods, which made it a duty on the part of the shipper to declare what they were, and especially if the concealment were in any way fraudulent on his part, their full value should not be contributed for. In such case, that which seems to have been the ancient rule might be applied; which was, only the value which the master might well suppose the goods to have, should be contributed for.

Jewels and bullion always contribute if saved, however small their bulk, in proportion to their value. So we think should bank-notes; unless it were plain that they could not have been lost in fact, because sufficient precautions had been taken to identify them, so as to recover their value if lost by wreck." See Parsons on Maritime Law, vol. 1, p. 323, and authorities there cited.

Weskett, tit. Contribution, n. 15, citing 2 Valin's Com. 200, classes bills with money, jewels, etc., as articles that ought to contribute, but Mr. Phillips very justly remarks, that "these are not so properly actual property, to the amount promised to be paid, as the evidence of demands, which evidence may be supplied by other, in case of their being lost, if sufficient precautions are taken by the holder to prove what particular notes they were, this circumstance sufficiently distinguishes them from specie or other property, which is usually made to contribute." 2 Phil. on Ins., § 1397.

It was held in the case of The Emblem, Davies 61, that bills of exchange, saved from a wreck, were not liable to salvage. And it would, therefore, follow that they would not be bound to contribute in general average.

*If the vessel is compelled to return to the port of departure,*

*and the voyage is broken up; or, by consent of parties, the average is immediately adjusted there, how is the cargo valued for contribution?*

Mr. Abbott states (847), that if the ship, in consequence of any misfortune to be sustained by general average, be compelled to return to its loading port, and the average be immediately adjusted, in that case the goods only contribute according to the invoice prices; for the price of sale is unknown.

In *Lee v. Grinnell*, 5 Duer 400, 430, where the cargo was damaged while in port and sold, it was held that the amount it brought at the sale was to be taken as the fair value.

In *Barnard v. Adams*, 10 Howard 270, 307, the Court said: "The place where average shall be stated is always dependent more or less on accidental circumstances, affecting not the technical termination of the voyage, but the actual and practical closing of the adventure. We see nothing in the circumstances to take this case out of the general rule, that contribution should be assessed on the value at the home port."

As a general rule, the valuation of the cargo in the *Invoice* (i. e., the invoice cost) is conclusive between the owner of the ship and the owner of the cargo, in the adjustment of a general average at the *home port*.

*At what place ought the average to be adjusted?*

At the place of the ship's destination, or delivery of her cargo. On this point all nations agree. Abbott on Shipping, 8th Ed., 508. An adjustment at an intermediate port, without the consent of the parties interested, would not be binding upon any one.

A *general average* is a matter in no way connected with a policy of insurance. It is a settlement between the vessel,

freight and cargo, made with the purpose of determining what proportion of a sacrifice, or expenditure, incurred for the common benefit, or safety, shall be borne by each one of the three classes of property always at risk, and liable to be assessed when a loaded vessel arrives at her port of destination, after such sacrifices have been made or expenses incurred. The proper time and place, therefore, for adjusting a general average loss, is, on the arrival of the ship at her port of destination. There the proprietors, or representatives of proprietors, of all the property will be found; there a uniform scale of value can be adopted as the basis of contribution; and there the means will exist for enforcing payment should any of the contributors resist the claim for their quota.

A *partial loss* or *particular average*, on the contrary, is a matter springing directly out of a contract of insurance; the parties to it, are merely the insurer and the assured, no one abroad has any concern in the manner of its adjustment, and it is utterly impossible for either party, to appeal to any other laws or usages than those of the place where the policy is made. The proper place, therefore, for adjusting a partial loss, is where the policy was taken out—or strictly in accordance with the rules of that place, and agreeably to terms of the policy or instrument of indemnity or agreement.

This distinction between general average and partial loss, is founded upon the necessity of paying the proper deference to the laws and usages of the port or place where all questions are necessarily to be determined by the legal tribunals, if the parties concerned happen to differ, and appeal to the law.

*Is the master compelled to part with possession of the goods before the sum, contributable in respect of them, is either paid or secured to his satisfaction?*

The persons who should contribute are, primarily, those to

whom the property actually belongs; but consignees, factors and agents may also be asked to contribute for the goods under their charge; and in general they will have the means, out of the goods in their possession, of making re-payment to themselves for the sums contributed in respect of those goods. But if the captain, or owner, or agent of the ship finds there is likely to be any withholding or disputing payment of the general average, he may refuse to deliver the goods, until he is satisfied that the receivers will pay their proportion.

The master is agent for all concerned in this matter, and he has a lien upon all the contributory goods for their contributions, and may refuse, and it is, in fact, his duty to refuse to deliver these goods to their consignees, unless the contributory shares are paid for or secured by bond or otherwise. In a recent case, a shipper entitled to contribution, and losing it by neglect of the master in this respect, held the owners responsible. *Gillett v. Ellis*, 11 Ill. 579.

In *Dupont de Nemours v. Vance*, 19 Howard's Rep. 162, it was decided, "That when cargo is lawfully jettisoned, its owner has, by the maritime law, a lien on the vessel for its contributory share of the general average compensation; and, that the owner of the cargo may enforce payment thereof by a proper proceeding *in rem* against the vessel and against the residue of the cargo, if it has not been delivered." This principle applies, with equal force, to the case where the ship-owner advances money at the port of distress to pay salvage upon the cargo; or where any shipper advances money; or where his goods are sold to pay salvage upon the ship or cargo; the party making such advance is entitled to a lien on the ship or cargo benefited by it, for contribution in general average. An unconditional delivery of the goods by the master to the consignee would be considered as a waiver of the lien, and it would be lost. *Rae v. Cutler*, 7 Howard's R. 729. It has been decided, however, and is undoubtedly the law, that if a master parts with the goods without such contributory payment, and afterwards pays over to the losing party the contribution to which he was en-

titled, he has an implied assumpsit against the person to whom he delivered the goods bound to the contribution. *And the owner of the goods is also liable, although the consignee signed a general average bond.* Eckford v. Wood, 5 Ala. 136. It is the uniform custom, in order to facilitate matters and avoid delay, especially in cases of perishable cargoes, for the master to deliver the goods, and take a bond (called an average bond) from the consignee, conditioned to pay his contribution when the average shall be adjusted, in accordance with the established usage and laws of the port of delivery, in similar cases.

*In what instances is the average sometimes adjusted at the home port or place of departure?*

If the occurrence which gives rise to a general average, happen in an early part of the voyage, and occasion the return of the ship to her port of sailing, or some other port accessible to the owner and shippers of the cargo, it is often convenient that the general average contribution should be made there, and not delayed till the vessel's arrival at her destined port. And when this is done by consent of all the parties in interest, it will be binding, but not otherwise.

In this instance, a different value must be set on the contributory interests. It will be the cost of all of them at the time of sailing, less any diminution of value by the accident or sea damages. And although this is not strictly the correct method of valuation, there is little to object to it, since all the interests are subjected to the same treatment. As to the freight, an exception is made in its favor, and an estimate is made of what it would produce *net* when the voyage shall have been completed.

*Is Government property exempt from contribution?*

It is not, neither in England or in this country. See Brown v. Stapleton, 4 Bing. 119; United States v. Wilder, 3 Sumner 308.

*Does an adjustment made on the protest and representations of the master, preclude the owner from showing negligence or want of skill, and therefore no contribution?*

In Chamberlain v. Reed, 13 Maine 357, it was held, that an adjustment made on the protest and representations of the master, would not preclude the owner of goods shipped on board from showing that the loss was occasioned through the culpable negligence, or want of skill of the master, and was not, therefore, a case for general average contribution.

*If, in the statement of a general average at the foreign port of destination in the case of an American ship, a charge by the ship-owner is excluded, which would have been included at the home port, are the insurers of the ship at the home port liable for the ship's proportion of the excluded item?*

It is often said in books, that an adjustment of general average, made at a port where it ought to be made, and made according to the laws of that port, and in good faith, binds conclusively all who are parties to it. But Mr. Parsons thus remarks: "There is, however, one exception, or rather one apparent exception to this rule, which rests, so far as authority is concerned, on one case only. This exception occurs, when there is a gen-

eral average loss which is adjusted abroad, and in that adjustment certain contributory claims are denied to the party suffering the loss, which claims would be allowed to him at home. When he returns and demands indemnity of the insurers, they cannot say that his whole loss was adjusted abroad, and that this adjustment of loss is conclusive against the assured; and that he cannot demand indemnity from them for any items of loss, denied him by that adjustment. Thus, if an American ship puts into a foreign port for repair or refitting, by reason of sea damage for which the insurers are responsible, and the wages and provisions from the time of bearing away until the repair is made, should go into average by the American rule, but do not by the rule where the adjustment of the loss is made, yet in applying the policy to the case, at home, these wages and provisions will be considered as properly an average loss, and the insurers will be held to pay the ship's proportion of them." Parsons on Maritime Law, vol. 2, p. 433; Thornton v. United States Ins. Co., 3 Fairfield 150; Power v. Whitmore, 4 M. & S. 141; Lennox v. United States Ins. Co., 3 John's Cases 178; Shiff v. Louisiana Ins. Co., Martin's Rep. 629; 3 Kent's Comm. 238; Bonsfield v. Barnes, 4 Camp. 228; Hughes on Ins. 228; Phillips on Ins., 4th ed., page 156; Stevens & Benecke on Average, page 279.

In Thornton v. United States Ins. Co., it was held, that in an action on a policy of insurance, by the owner of a ship against the underwriters, the adjustment of a general average loss is not conclusive on the owner, but he may show that items of loss were omitted in such adjustment, which, by the laws of this country, where the contract is entered into, should have been included. As between the parties, said the court, a foreign adjustment is conclusive. The party contributing can recover nothing back, the party to whom the contribution is made can recover nothing further, and he who has been compelled actually to contribute, on the basis of the foreign adjustment, can recover of his insurer the amount thus contributed, and nothing more. To this extent, we admit the conclusive character

of a foreign adjustment, but have been unable to find adjudged cases to carry us further. We have found no case, where the party to whom contribution has been made has been restricted, in his claim upon his underwriters, to the sum apportioned as his share of the loss, by the foreign adjustment, when that sum fell short of a complete indemnity, according to the law of the place where the contract of assurance was entered into. If the foreign adjustment includes, as general average, what constitutes only a partial loss or particular average, according to the authorities, the adjustment is not binding upon the underwriters, either because the loss was not covered by the policy, or not coming within the term general average, is not therefore to be adjusted abroad, and we do not perceive any good reason against applying a similar rule in favor of the insured, in cases where, by the foreign adjustment, losses are excluded, which by the law of the place where the contract was made, are considered as falling within general average. \*

\* \* \* \* \* We cannot admit that the contract is to be construed by foreign law or foreign usage, or that we are to resort to either to ascertain what losses are covered by it, or what is to be included in each description of loss."

The main argument in favor of the rule as laid down in the foregoing decision, is, that the policy is an instrument which binds by the law and custom of the place where it is made, and that by those laws and customs it is to be construed, and by them only. And also, that it is in accordance with the spirit which animates the system of insurance, that the assured should have under a policy, complete indemnity against all risks.

I am, however, inclined to the opinion, that a policy of insurance is not a contract of indemnity in the absolute sense as stated by some writers; but a writing of indemnity in a *limited sense*, that it is a contract of indemnity restricted by certain conditions and provisoies, either expressed or implied, and the following is one of them:—Where ship or goods are insured for a voyage from this country to a foreign port, and sufficient evidence is given of an invariable usage at such port, to adjust as

general average, losses which are not so in this country; or to exclude from general average, items which would be admitted here, both the underwriters and the assured are respectively bound thereby, on the ground that they are presumed to be aware of the usage prevailing at the foreign port, to which the contract of insurance relates.

The weight of authority both in this country and in England is, that the items included, and the sums apportioned and paid according to the law of a foreign country, as a general average, in an adjustment thereof, made there, are conclusive upon, and payable by the underwriters here, as a general average, although not apportioned in the same manner, and not deemed items of general average by our law.

The engagement of the underwriters in a policy is usually construed to be, that they will pay, whatever the assured is compelled to pay as a general average arising from the risks insured against. And it would hardly be considered equitable, to hold the adjustment binding when it is in favor of the assured, and not binding when it is in favor of the underwriter.

I have, as Adjuster of Averages for one of the principal Marine Insurance Companies of New York, had an opportunity of examining hundreds of statements, in which the column of general average disallowed items which would be admitted by our custom; and on the other hand, comprehended items which would be disallowed here—and, except in one or two very extreme cases, I have found the Average Adjusters, by making no re-adjustment of those items at the home port, practically hold, that when a foreign adjustment is rightly settled according to the laws and usages of the foreign port, it is binding not only as between all the parties interested in the adventure, but also, as between the assured and the underwriter.\*

\* "See Adjustment General Average Practice."

## **CHAPTER XIII.**

### **OF PARTIAL LOSS.**

Partial loss implies a damage which the ship may have sustained, in the course of her voyage, from any of the perils mentioned in the policy. When applied to the cargo, it means the damage which goods may have received, without any fault of the master, by storm, capture, stranding or shipwreck, although the whole, or the greater part thereof, may arrive in port.

The species of risks most usually insured against in marine policies are *perils of the seas, fire, piracy and theft, barratry, capture, arrests and detentions.*

**PERILS OF THE SEAS**, comprehend those of the winds, waves, lightning, rocks, shoals, collision, and, in general, all causes of loss and damage to the property insured, arising from the elements, and inevitable accidents.

The damage that seas can do to a ship is by striking her upperworks, by which bulwarks and stanchions, boats, spars, harness and water casks ropes, and other stores and materials may be carried away or broken; the chain plate bolts may be broken and the rigging consequently loosened; the sea may carry away or damage the rudder, the capstan and windlass; it may break or spring masts and yards, and burst sails; it may cause the vessel to roll so as to carry away her topmasts and spars;

it may burst hatches, break skylights, and get below into the cabin, destroying thereby perishable stores, charts, books, instruments and furniture; it may throw the vessel on to her beam-ends, and threaten her with destruction; it may strain the upper-works and the decks so that water enters the ship's hold and requires her to be freed from it by the use of the pumps; and it may shake the vessel throughout so violently as to wrinkle the metal sheathing and strain her, causing a derangement of the caulking, the springing of butts and the opening of seams, so as to make the vessel leak below; and it may by falling on the decks break some of the beams and other substantial parts of the fabric.

In the adjustment of the majority of the above losses and injuries, there is scarcely ever any difficulty. When the vessel arrives at the port of destination, or reaches a port of distress, a survey is held on her to ascertain and specify the damages she can be observed to have sustained, and the vessel is properly repaired and refitted. These repairs, after the deduction of a third new for old, form a claim under the policy against the underwriters.\*

It is to be borne in mind, however, that the underwriters can only be held liable to pay for what has really been rendered needful by accident. It often happens with ships which are not new, that in repairing the fresh damages, a number of old sores and imperfections come to light, and are, very properly, remedied as the work proceeds. But these repairs appertain to the owner and not to the underwriter, and must be selected and put aside by the Adjuster. The Average Adjuster must exercise his judgment in comparing the account he receives from the protest and the verbal explanations of the captain with the surveyor's reports, and the bills of the shipwright, and the various mechanics employed in repairing and replacing damages. The Adjuster must not allow the underwriters to be charged with an extravagant or unnecessary expenditure in repairs, or permit an addition to be made to the ship's fabric, or any substitution of superior materials for what

\* In *Potter v. Ocean Ins. Co.*, 3 Sumner's R. 27, Gross, J., held that the expense of transporting ship to dock or elsewhere for repairs, should not be subject to the deduction of one-third new for old. In practice it is a rule almost universal to make the deduction. But one of the oldest and

were taken away, unless in some places where the former are the only materials procurable.

The underwriter is responsible for the repairs or restoration of the damaged or destroyed part of the ship or articles belonging to it, with materials, workmanship, style and finish corresponding to its original character.

Underwriters are liable for all damages caused by a peril insured against, which happens to a sea-worthy ship, even though this damage be greater than would have resulted, had the vessel been stronger. But they are not liable for the ordinary *Wear and Tear*. And, if cables, sails, rigging, anchors, boats or the like, give out and are lost, under ordinary circumstances, without peculiar strain or any known extraordinary risk, the loss will be attributed to wear and tear, and not to a loss by a peril of the sea. In some instances, the nature of the loss determines the question of the underwriters' liability. If a rope gives way, generally it would be because it was not strong enough. If timbers are broken, the injury would generally imply extraordinary violence. If the damage or loss fall on the spars, the sheathing, or upper-works, or boats, there must always be an inquiry into the circumstances of the case, into the degree of violence which caused the loss, and the manner in which the lost article was secured against injury. Thus, if a boat is lashed on deck, only extreme violence would tear it away. If hung from the davits, at the stern or side, it is easily lost by no uncommon peril, and it may be a question whether it was so secured at that very time, as to be sea-worthy, that is, able to encounter the perils it must be expected to meet. So the indefinite deterioration of the ship by straining, the opening of seams, or butt-ends, without a storm or violence, and the like, are not covered by the policy.

The destruction of a ship by *worms* is not a "peril of the sea," because it is not an *extraordinary* circumstance. In certain waters, and at certain seasons, it is a natural result of causes always in operation, which are to be expected, and may be perfectly prevented by adequate precautions; and it may be

most respectable adjusters in the United States invariably follows the decision cited above, but the underwriters do not generally pass a claim made on that basis. Note to 2d Ed.

likened to, a loss by wear and tear. And so, if loss or damage be caused by *rats or other vermin*, it would seem that the underwriter would not be liable unless the owner or the master had done all that could be done by any reasonable exertions or means to extirpate them, and without success. Chancellor *Kent*, 3 Comm., p. 300, says: "The better opinion would seem to be, that an insurer is not liable for this sort of damage, because it arises from the negligence of the common carrier, and it may be prevented by due care, and is within the control of human prudence and sagacity." But in *Garrigues v. Coxe*, 1 Binn. 592, a leak occasioned by rats, without the neglect of the captain, was held to be a peril within the policy.

Damage caused by a vessel's grounding or stranding is a loss by peril of the seas within the policy, provided it does not happen in the usual course of navigation, as where a vessel is destined to a tide harbor, where she expects to take the ground when the tide ebbs. And in such a case, if there be a heavy swell, which causes the injury, the underwriters are liable.

It is sometimes necessary to heave a ship down, and if she is injured while this is being done, there seems to be no good reason why it should not be considered as having happened by a peril of the sea, but it has been decided otherwise. *Thompson v. Whitmore*, 3 Taunt. 227. The underwriters, however, hold themselves liable for this damage, as covered by the general clause.

The liability of the underwriters extends to any extraordinary expenses necessarily incurred in consequence of a peril insured against, as in raising funds for repairs; but not to the expense of wages and provisions of the crew while employed on the repairs; nor while the vessel is detained, as by an embargo. *Parsons' Maritime Law*, vol. 2, p. 435; *Orrick v. Commonwealth Ins Co.*, 21 Pick. 456, 469.

*What is the rule for deducting one third, new for old?*

Whether the value of the old materials should be deducted from the cost of repair, before the one third is deducted, is not settled by authority; but the rule in New York and Massachusetts, is, that the value of the old materials is first to be deducted from the gross amount of expenses, and then one third new for old is to be deducted from the balance, thus:—

|                                   |   |   |   |   |         |
|-----------------------------------|---|---|---|---|---------|
| <i>Partial loss, repairs,</i>     | - | - | - | - | \$5,000 |
| <i>Less, sales old materials,</i> | - | - | - | - | 500     |
|                                   |   |   |   |   | ————    |
|                                   |   |   |   |   | \$4,500 |
| <i>Off one third new for old,</i> | - | - | - | - | 1,500   |
|                                   |   |   |   |   | ————    |
|                                   |   |   |   |   | \$3,000 |

This rule of deduction is expressly provided for by a special clause in the New York policies, by which it is agreed that, "in case of claim for loss or damage, a deduction of one third from the cost of repairing or replacing the same shall be made, after deducting the value of the old materials, except in the case of anchors, and of sheathing copper or other metal."\*†

#### *What deduction is made on Copper sheathing?*

The following deduction is provided for by a special clause in the New York policies:—

*"A deduction of one-fortieth from the expense of repairing or replacing the metal sheathing, or any part thereof (after first deducting the value of the old metal and nails), shall be made for every month since the vessel was last sheathed, until the expiration*

\*Under Philadelphia policies the one third is first deducted, and from the remainder is taken the value of old materials.

†In the case of *John Brooks v. Oriental Ins. Co.*, 7 Pickering's Rep. 258, PUTNAM, J., decided that, "In the case of a partial loss on a ship, in making the deduction of one-third new for old from the expenses of repairs, the value of the old materials is to be first deducted from the gross expense, and then one-third is to be deducted from the balance." Note to 2d Ed.

of forty months, after which time the cost of re-metaling or re-pairing the same, shall be wholly borne by the assured."

And the following is the condition of the Boston offices:—

"It is especially agreed, that instead of deducting one third for new on the article of copper sheathing in partial loss, there shall be deducted two and a half per cent. of the cost of re-coppering, after deducting the value of the old copper and nails, for each and every month the copper shall have been on the vessel at the time of re-coppering; and if the copper shall have been on forty months, the cost of re-coppering shall be wholly borne by the assured."

The underwriters of New York, at a meeting of the Board in 1858, passed the following resolution, as to the proper construction to be placed on their clause:—"It is intended to embrace the expense of sheathing metal, nails, sheathing paper or felt, labor, an equitable proportion of dock hire or heaving down, and every expense incidental to the sheathing of the vessel; including the expense of caulking under the sheathing."

The rule, as practiced by Adjusters in New York, however, is not quite uniform, some adhering more closely than others to the underwriters' construction. I am, perhaps, safe in stating that the general practice, both in New York and Boston, is to consider the following items as pertaining to the coppering, viz.: The metal—The nails—The paper or felt—The tar and mops used in coppering—The labor putting on—to which there is sometimes added a portion of the dockage, or dock hire, but this depends upon the facts in each case; for instance, if it appears that it was necessary to take the vessel out of water to make repairs in and about her bottom, which necessarily occupied many days, and that the time used in putting on the copper was comprehended therein, so that in fact, no time was so occupied exclusively, then the dock hire is not deemed part of the expense of coppering, but, if it appears that little or nothing was done to the bottom, except stripping off the metal, caulking, and putting on the new, then the practice is to charge

some part of the time to the coppering; that is to say, the extra lay days on the dock, but, not the expense of hauling in, or up, nor the time so used, or used in getting the vessel out, or off the dock, these being (by the custom in Boston, and considered also by some adjusters in New York), incidents pertaining to the caulking, rather than to the coppering. Punching the copper, picking up the the old, truckage &c., &c., are considered as pertaining to the coppering.

It will be observed, that the copper clause in the New York policies, has no essential meaning different from the Boston, except in the words "*or any part thereof,*" which make the provision in the former applicable to cases of mere patching of the metal; in Boston, this is not considered as coppering in the sense intended.

In England, by the "Custom of Lloyds," underwriters do not pay for stripping and re-sheathing of the bottom, unless the vessel have touched the ground or been in contact with some body below the water's edge. Mr. *Hopkins*, an Average Adjuster of distinction in London, in a very valuable work on Average, published in 1859, writing on this subject, says:— "Metal sheathing is a material exposed to progressive loss by mere contact with water, and with more rapid waste when the ship is passing quickly through the sea, because by oxydation the surface of the metal is constantly corroded, and is rubbed off by the friction of the water through which the vessel is propelled. Sir Humphrey Davy and others, have turned their attention to this subject, and have endeavored to devise means to reduce or prevent the wasting of metal sheathing. The great chemist just named, tried the protection of iron bolts of particular forms and size below the metal, and a galvanic action was set up, which exerted itself in rings round the protectors, and really had the effect supposed and intended; but another result was occasioned, and which proved more disadvantageous, even, than the gradual loss of the copper:—the surface of the metal being more nearly permanent, all the protected circles became covered with weed, barnacles, and other

growths of vegetable and animal life, and the object of the experiments was defeated by its too great success; for the saving of metal took the place of a *clean bottom*. The course of the ship was impeded by the substances which adhered to it; and after several trials of modified means, the experiments were given up. The waste of copper goes on in a ratio not quite uniform, but which may be roughly estimated at twenty-five per cent. in each year on the quantity of metal remaining. Thus at the end of the fourth year, it is generally necessary to re-metal the bottom although the vessel has not met with any accident; the quantity remaining on her will have been reduced to about a quarter or a third of the original weight, and that probably wrinkled and broken by the working of the ship when carrying a cargo at sea. The Yellow Metal, an alloy of copper patented by Mr. Muntz, is less soluble, but it is more brittle. It lasts longer, weight for weight, than copper, but in case of accident, it is more destructible."

The rule is general in the United States, that a weight of metal equal to the quantity stripped off, is allowed in full. A deficiency in weight is charged to the underwriters in the partial loss column; an excess of weight, is charged to the owners in the owners column. Where copper is stripped off, and replaced with yellow metal, the owners are entitled to claim from the underwriters, an additional amount equal to the difference between the cost of copper and yellow metal.

*As the deduction of one third new for old, is made only from the repairs, what are the expenses which may be said to belong to repairs, from which the deduction is made?*

It is the custom of New York, and most of the commercial states of the United States, to deduct a third not merely from the expense of materials and labor, but also from such other

incidental expenses as seem distinctly connected with the repair, such as dockage, and the moving of the vessel from the wharf where she is moored; or the place where she is anchored, to the place of repair.

The cost of documents, the protest, surveys &c., are charged to partial loss *net*, i. e. without the deduction; as are also the charges incurred before repairs, and evidence necessary to establish the claim against the underwriters.

In *Potter v. Ocean Ins. Co.*, 3 Sumner 27, 45, it was held, that one third was not to be deducted from the amount of the expense of towing the vessel across a river to a ship-yard, for the purpose of repairing her, and that of assistance in getting her across and boat hire, and that of towing her back. *Story, J.*, said: "In regard to the deduction of one third, new for old, the true interpretation of that rule has always appeared to me to be, that it is strictly applicable only to labor and materials employed in the repairs, and to the new articles purchased in lieu of those which were lost or injured by the disaster. It would be strange to apply it to other independent expenses, which were merely incidental to the loss; for in no just sense can it be said, that the owner is benefited thereby, or that he receives an enhanced value therefrom, beyond his indemnity."

There is one kind of repairs which is allowed without the deduction of a third; viz., those *temporary* reparations done in ports where the vessel cannot be restored perfectly and permanently, or unless at great expense, but which may suffice to allow her to complete her voyage. These repairs, having to be taken away afterwards, are clearly not to be held in any way to be meliorations or improvements, and must be charged to the underwriters in full.

*Is damage by Fire a peril of the sea, for which underwriters are liable?*

Fire is not a peril of the sea as between the shipper of goods and the ship-owner, and therefore most bills of lading contain an express exception against fire. The same rule would apply to a case of insurance; but as fire is always specifically insured against, the underwriters are liable.

When fire breaks out in a ship it generally ends in her destruction; the great bulk of a vessel being composed of combustible, and certain parts of very inflammable, materials. When only partial in its damage, the injury from burning is Partial Loss, and subject to the same rules as the preceding.

The danger from fire has become of late years so great as to render necessary the utmost precaution against this destructive element, not only in the stowage of cargoes, but by keeping a full and competent watch on board vessels lying at anchor or at the wharf. If possible, the sails should be unbent in all cases, when the vessel might receive damage while lying at her dock from fire occurring in adjacent buildings.

*What is the liability of the underwriters for loss by pirates, robbers or thieves?*

The usual insurance against these risks, renders the underwriters liable for losses or damage arising from all such acts as amount to piracy or robbery; even, it is said, if they are committed by the crew, provided due care and diligence have been used to prevent them; as if there be a mutiny of the crew. 3 Kent's Comm. 303; Parsons' Maritime Law, vol. 2, p. 236; 1 Phillips' Ins., § 1106; Arnould on Ins., vol. 2, § 817.

Mr. Parsons says: "To bring a loss within the words of this clause, there must be violence, for without this there can be neither piracy or robbery. But there may be theft without violence; and whether a loss by such theft would come within this clause, is not certain from the decisions. But the weight

of American authority, upon the whole, would lead to the conclusion that insurance against 'theft,' or against 'thieves,' would make the insurers liable for a loss by larceny. To avoid this conclusion, the phrase 'assailing thieves,' is sometimes used; and this no doubt covers only theft, *ab extra*, with violence. And even if robbery or theft is not insured against, but loss occurs by them in consequence of an exposure to theft by shipwreck, or as the direct and immediate effect of any peril insured against, the insurers would be held liable for this." Parsons' Maritime Law, vol. 2, p. 236.

*What is the liability of the underwriters for loss by Barratry?*

"Barratry of master and mariners," is one of the perils insured against in our common printed forms of policy; and may be defined to be, an unlawful, fraudulent or dishonest act of the master, mariners, or other carriers, or of gross misconduct, or very gross and culpable negligence, contrary, in either case, to their duty to the owner, and that might be prejudicial to him or to others interested in the voyage or adventure.

If an unlawful act be done without intention, or through inadvertence or ignorance, it is not barratry. The act must be wrongful in itself, and wrongfully intended; for if it be done in compliance with the owner's instructions or request, or with his assent, it is not barratry, even as against others who are injured by it.

If a master undergoes any extraordinary and evitable peril, from no necessity whatever, but in the belief that it might be advantageous to his owner, a loss arising from this risk would be a loss by barratry. So if the act were done by the master for his private and personal benefit.

If the master is the sole owner of the ship, he cannot commit barratry against other parties in interest as shippers of

goods, or as charterers. But it seems, that a captain who is a part-owner, may commit barratry against his other part-owners, and also against a charterer. Parsons' Maritime Law, vol. 2, p. 243, and cases there cited.

Trading with the public enemy is a barratrous act, even though done with the purpose of benefiting the owners. So is collusion by the captain with an enemy privateer, to have his ship captured—and fraudulently sailing for the port of the enemy—and resistance to search when rightfully demanded by a belligerent—and the rescue of a neutral vessel detained and sent in for examination by a belligerent, being, in effect, a resisting of the right of search—and wilful violation of blockade—or of an embargo—and in case of the captain's going off the course and fraudulently selling the vessel—theft, embezzlement and wilful destruction of the property insured, are in their nature barratrous acts. A gross and palpable violation of trust by the captain, and a reckless disregard to his duty, is barratry, though without any view to his own particular advantage to the prejudice of his principals; as in case of the captain's sailing with an unfavorable wind, contrary to the directions of the pilot, having before refused to sail, when the wind was fair; and his disregarding the pilot's instructions in other respects, though informed of the consequences; and his conduct in cutting the cable so that the ship drifted on the rocks. Hayman v. Parish, 2 Camp. 149.

As the master is, for many purposes, the agent of the owner, and is appointed by him, many policies provide that they do not insure against barratry, if the assured be owner of the ship. Such a provision, of course, generally limits the insurance against barratry to a loss or damage to the cargo, and to such cargo only as is shipped by a party who is not an owner of the ship. Paradise v. Sun Mut. Ins. Co., 6 La. Ann. 596; Brown v. Union Ins. Co., 5 Day 1. The intention is, not to insure an owner against the misconduct of a person selected and appointed by himself.

The owner and his master, are always required to guard, with

all diligence, against the misconduct of the crew; and for their misdeeds, if such diligence be wanting, the insurers are not liable; but where all proper care and diligence are used, the insurers are then responsible for losses caused by the barratrous acts of any of the officers or crew. Elton v. Brogden, 2 Stra. 1264. And insurance against the barratry of the master and crew, includes larcenies and embezzlements of the goods insured, by either the master or any of the crew, excepting only petty thefts and the like. Parsons' Maritime Law, vol. 2, p. 245; Am. Ins. Co. v. Bryan, 26 Wend. 563; Stone v. National Ins. Co., 19 Pick 34.

*What is the liability of the underwriters under the General clause respecting other perils?*

The general clause against all other risks and perils covers other perils of a like kind to those specified.

After the enumeration of the particular risks, the policy usually contains a general clause, by which the subject is insured against "all other perils, losses and misfortunes which shall come to the hurt, detriment, or damage of the said goods, or ship &c., or any part thereof."

This final undertaking of liability by the underwriters, may seem so wide as to include every possible loss, damage and contingency which can happen to the ship. And it may seem to exclude any defence which underwriters might make to an action for loss or damage brought against them. The definition of the underwriters' liability is, certainly, very comprehensive; but we must look to the usual and consistent interpretation which has been made of the terms by courts of law and by writers on the subject of insurance; and also, which is of great importance, to that general impression which prevails in the minds of underwriters themselves when they sign a policy; because intention, though not on every occasion openly expressed,

is to be looked to in construing contracts which are for the most part couched in the unvarying terms of a printed form.

It may, then, be unhesitatingly asserted that underwriters by their policy have no intention of granting such a plenary indemnity as it would amount to if they undertook to restore every ship at the end of the voyage insured to the same condition in every respect in which she was when she sailed. For then they would virtually have to repair the ordinary ravages of time. They would have to cure the inherent defects which might have existed in the ship, and which from some cause exhibited themselves during the currency of the policy. The underwriters do not mean to undertake this. The foundation of claims on them is *accident*. The damage which the vessel sustains must be something extra to the ordinary events, to the ordinary waste and decay which all shipping is subject to. The underwriters, it must be borne in mind, are responsible for the *extraordinary*, and not the ordinary events of a voyage.

The general clause, enlarges the scope and operations of the policy very little, because by a common principle of construction (that general words are restrained by the particular recital) it is always construed to mean other perils of like nature or character with those enumerated, which would therefore be included, generally at least, in the other clauses.

But these words have been declared by courts to be material and operative, and underwriters have been held liable under them, but, as it seems, in most of these cases they might have been held liable as well under other clauses. In Cullen v. Butler, 5 M. & S. 461, the vessel was lost by being fired into through mistake. Held, that the loss was covered by the general clause. The following have been held to be covered by the general clause. Damage done to a vessel in a graving dock for repairs, by being blown over by the wind—Phillips v. Barber, 5 B. & Ald. 161; or by the explosion of the boiler—Perrin v. Protection Ins. Co. 11 Ohio 147; or while the vessel is being hauled up on a marine railway, and is partly in the water and partly on the land—Ellery v. New England Ins. Co.,

8 Pick. 14; injury sustained by the accidental breaking and giving way of the tackle and supports whereby the vessel was supported in being moved from a dock where she had been hauled up for repairs—Deveaux v. J'Anson, 5 Bing., N.C., 519. So, it would seem is loss by barratry committed by one part-owner against another, or against any other party in interest. Per *Martin, B., Jones v. Nicholson*, 10 Exch. 28, 26 Eng. L. & Eq. 542. In *Moses v. Sun Mut. Ins. Co.*, 1 Duer 159, it was held that a loss occasioned by the sale of a part of a cargo of provisions to pay for necessary supplies at an intermediate port; and the necessary consumption of the rest by the passengers and crew, owing to the want of a proper supply on board the ship, was not covered by this clause. Mr. Justice *Duer* said: “The words of the general clause, broad as they are, in this as in many analogous cases, are limited in their application by the specification that immediately precedes them, and therefore have their due effect assigned to them, by allowing them to comprehend and cover only such other cases of marine damage as are of the like kind (*ejusdem generis*) with those specifically enumerated, and are occasioned by similar causes.”

*Can those repairs which are of a general average nature, be limited to those which are of a partial loss nature, and the two combined be claimed as partial loss under the policy?*

They can. But with a right to the underwriters to have the benefit of the general average contribution for such repairs as are to be made good in the general average, which contribution the assured must transfer to them or account to them when received.\*

\* Many eminent New York counsellors, among them *Lord, Cutten and Souder*, hold the opinion expressed in the text. Adjustments have also been made, based on that construction, and paid by some of the New York underwriters; but I have not been able to meet with any decision directly sustaining it. On the contrary, there are very respectable dicta against it. Mr. *Annesco* (vol 2, 806), in treating of the construction of the clauses, “Warranted free from average under five per cent,” says: “The rule is, that General and Particular Average cannot be added together so as to make the underwriter liable, if their aggregate amount exceed the requisite per centage.” In the Boston form of policies the stipulation is, that the underwriter shall be free from Partial Loss under five per cent., and the rule, cited from *Annesco*, has always governed adjustments made in that city. *Note to 2d Ed.*

## PARTICULAR AVERAGE OR PARTIAL LOSS OF GOODS.

A distinction is sometimes taken in books, between a particular average and partial loss; thus, the term "particular average" is used to signify the mode of adjusting a loss on goods arising from the article being deteriorated in value, in consequence of its being sea-damaged; and the term "partial loss" to signify a loss to, or of a part of, the thing insured. But practice, particular average is usually taken to mean the same as partial loss; and this use of the expression is defended Maude & Pollock on Shipping, p. 189; and by Abbott on Shipping, p. 473. To relieve the lay reader from perplexity, I prefer, therefore, to use the phrase "*Partial loss*" altogether whether in considering loss by sale of goods damaged by perils at some intermediate port, or, when considering loss arising from the depreciation of goods owing to sea-perils, andcertained at the place of destination.

We have elsewhere (page 46) stated how a particular average or partial loss on cargo is usually adjusted under an open policy; we propose, therefore, in this place, merely to state a few of the charges which do or do not give a claim as for a partial loss against the underwriters on goods.

The underwriter on goods is not responsible, under the common form of policy, for the loss the merchant may incur having to pay the same freight on sea-damaged goods arriving in bulk at their port of destination, as he would have had to pay had they arrived sound. Caze v. Baltimore Ins. Co. Cranch. 358; Columbian Ins. Co. v. Catlett, 12 Wheaton 38; Armroyd v. Union Ins. Co., 3 Binney 437.

We have, under suggestions to the master, considered the duty in case of wreck to tranship and forward the goods if can; but the question arises, whether, if the goods are sent forward at an increased freight, the underwriter on goods or the underwriter on freight is responsible. As a general rule, it will be said, that underwriters on goods have nothing to do with freight. But to this rule, there must be an exception.

*Parsons* states it thus. "If the goods are sent on for the benefit of the insurer on them, he should be liable for the increased freight, but not if this increased freight might be avoided by a delay which would not be injurious to the goods, and they are sent forward for the benefit of the owner." *Parsons' Maritime Law*, vol. 2, p. 439.

When the goods are in a damaged condition at an intermediate port, it is the master's duty to forward them if he can, and if the goods require drying or washing, as hides sometimes do, to enable them to be brought on, and this can be done at a reasonable expense, it would clearly seem to be the duty of the master to cause this to be done. And, if he fails in his duty in this respect, the underwriters are not liable.

When goods are necessarily sold by the master in a port of distress to defray the expenses of repairing the ship, the loss sustained from the sale by the shipper of the goods may be recovered by him against the owner of the ship, but cannot be claimed as an average loss from the underwriter on goods. *Giles v. Eagle Ins. Co.*, 2 Metcalf 140.\*

Where the vessel is wrecked and the cargo is sent forward in another vessel to the port of destination, the underwriters are liable for a loss while the goods are in such substituted ship. *Winter v. Delaware Mut. Ins. Co.*, 30 Penn. State 334. So if it is necessary on account of the loss of the ship to carry the cargo over land to tranship it, the underwriters are liable while this is being done. *Bryant v. Commonwealth Ins. Co.*, 13 Pick. 543, 555.

Underwriters are liable for no subject matter of insurance, which is destroyed by reason of its own inherent defects, or tendencies. But this rule does not apply to tendencies which are called into activity only by a peril insured against. Thus, if hemp insured, burns up or rots from spontaneous ignition or fermentation, it being known that this may happen if the hemp be damp, but not if it be dry, the question would be, whether it was damp or dry when it was put on board. If it were then damp, or if it were then dry but became damp through the

\* But where the repairs are a subject of contribution in general average, the underwriters on cargo must contribute their proportion of the necessary sacrifice to raise funds for the purpose of defraying the expense of the repair, but they are not directly liable to the shipper for such loss. *Miles v. 2d Ed.*

fault or defect of the ship, the underwriters would not be liable, either for the hemp, or for the ship, if the burning hemp destroyed the ship. But if the hemp were dry when laden, and was afterwards wet by reason of the straining of the ship in a storm, or by the shipping of a sea, or any like peril, then the underwriters, whether on the ship or cargo, would be liable. Parsons' Maritime Law, vol. 2, p. 216; Boyd v. Dubois, 3 Camp. 133.

*Can damage to cargo by jettison, as well as the damage occasioned by the vessel's leaking, be united and treated as partial loss, so as to bring the claim up to the stipulated per centage?*

*And can the assured claim from the underwriters, the insured value of the cargo jettisoned, or must he accept of the market value at the port of destination, which he may have received under a general average settlement?*

A loss by jettison is among risks expressly assumed by underwriters

The Supreme Court of the State of New York, as early as the year 1803, in the case of Magrath v. Church, 1 Caines' R. 215, decided that the assured was entitled to recover the value of cargo jettisoned, directly from his underwriter, as a loss arising from a peril specified in the contract, and expressly assumed by him.

In Faulkner v. The Augusta Ins. Co., 2d McMullen R. 158, it was held, that a party insuring goods is not obliged to demand payment of the contributors, before bringing suit against the insurers for a loss by jettison.

In Potter v. The Providence and Washington Ins. Co., 4 Mason 298, Judge Story held, that the amount due to the assured by his underwriter, is the value of the goods insured and jettisoned, at the rate fixed in the policy, less the amount to be

contributed by the assured on the balance of the cargo not insured and belonging to him.

In *Forbes v. The Manufacturers' Ins. Co.*, 1 Gray's R. 371, the Supreme Court of Massachusetts held, that the owners of teas laden on board of the ship "Paul Jones," a portion of which had been jettisoned on the voyage from China, and which was valued in the policy, at twenty per cent. advance on the invoice price, might recover of the underwriters, without first demanding contribution from the other interests benefited by the jettison. It further decided, that the underwriters were liable for the amount at which the teas were valued in the policy, although it exceeded their market value at the place of destination. In other words, that court held, that a loss by jettison having been directly insured against, was recoverable under the policy, and at the value therein specified.

The rule is different, if the owner of the goods jettisoned, be also the owner of the vessel, and of the other portions of the cargo not covered by the policy, or, if he be the owner either of the vessel or of any interest liable to contribute on behalf of his interests not covered by the policy. *Pezant v. The National Ins. Co.*, 15 Wend. 453; *Potter v. The Prov. and Wash. Ins. Co.*, 4 Mason 298.\*

It is, therefore, perfectly clear from the foregoing adjudged cases, that the damage to cargo by jettison, as well as that occasioned by the leaking of the vessel, can be treated as a partial loss, and recoverable under the policy, though the loss by damage exclusive of the jettison, do not amount to the stipulated per centage.

It is also clear, that in estimating the damage by jettison, the rate fixed in the policy, is to be considered as the value of the cargo so lost, and the claim made on the underwriters should be stated on that basis.

#### OF THE MEMORANDUM.

The policies in general use in this country, except from all loss that is not total, certain articles, and from all loss by dam-

\* The underwriter is liable directly to the assured for a loss in its nature a General Average loss; that is, resulting from a voluntary sacrifice or its necessary incidental consequences, without failing to collect contributory shares from other parties, unless, indeed, the same person be owner of

age that is less than certain proportions, other enumerated articles of cargo (all of these articles being especially liable to damage).

In all the policies in use in New York, it is in the following form:

*"It is also agreed, that bar, bundle, rod, hoop and sheet iron, wire of all kinds, tin plates, steel, madder, sumac, wicker-ware and willow (manufactured or otherwise), salt, grain of all kinds, tobacco, Indian meal, fruits (whether preserved or otherwise), cheese, dry fish, vegetables and roots, rags, hempen yarn, bags, cotton bagging, and other articles used for bags or bagging, pleasure carriages, household furniture, skins and hides, musical instruments, looking-glasses, and all other articles that are perishable in their own nature, are warranted by the assured free from average, unless general; hemp, tobacco stems, matting and cassia, except in boxes, free from average under TWENTY PER CENT., unless general; and sugar, flax, flax-seed and bread, are warranted by the assured free from average under SEVEN PER CENT., unless general; and coffee, in bags or bulk, pepper, in bags or bulk, and rice, free from average under TEN PER CENT., unless general."*

*"Warranted by the assured free from damage or injury, from dampness, change of flavor, or being spotted, discolored, musty or mouldy, except caused by actual contact of sea water with the articles damaged, occasioned by sea-perils. In case of partial loss by sea-damage to dry goods, cutlery or other hardware, the loss shall be ascertained by a separation and sale of the portion only of the contents of the packages so damaged, and not otherwise; and the same practice shall obtain as to all other merchandise, as far as practicable. Not liable for leakage on molasses, or other liquids, unless occasioned by stranding or collision with another vessel."*

The reason of these exceptions is the great liability of such articles to damage from slight causes, insomuch that it is not easy to discriminate damage by ordinary causes from that resulting from the extraordinary perils insured against, which both vessel and cargo. *Magnat v. Church*, 1 Caines, 196; *Watson v. Mar. Ins. Co.*, 7 Johns, 51.

But the rule does not apply where the assured is owner of the vessel and cargo. Then, as owner of the cargo, being bound to contribute, he is deemed to have the contribution in his own

latter cause of loss, as has been previously seen, is the only one against which the assured is entitled to indemnity. Accordingly, these specific exceptions are introduced as one test of the operation of the peril being extraordinary.

All other goods pay average when it amounts to *five per cent.* and upwards; but special agreements can be made in reference to all goods, altering the customary per centage in the warranty or entirely shutting them out from the payment of average. In the latter case, the underwriters, of course, charge a less premium.

Where the memorandum clause warranting the cargo *free from average unless general*, applies, the underwriters only are liable (in case of injury to the cargo itself as the cause of loss) in the event of a total physical loss of the cargo; the whole must be so damaged that it cannot reach its port of destination specifically as merchandise. The insurer is not liable if any part of the cargo remains undamaged. General average charges, however, the underwriter would have to pay by virtue of the special effect of the warranty of the memorandum clause.

It has been decided that *hides and skins* do not include *furs*; but *skins* comprehend *deer-skins*. *Bakewell v. United Ins. Co.*, 2 John's Cas. 246.

The specification of one description of an enumerated article, as *dried* fish, excludes all other descriptions of the same, as *pickled* fish; so also, where the word *roots* was among the enumerated articles, it was held not to include sarsaparilla, because not liable to decay by sea damage. *Blackwell v. United Ins. Co.*, 2 John's Cases 246; *Coit v. Colonial Ins. Co.*, 7 John 385.

Under the exception of "other goods that are perishable in their own nature," *potatoes* are deemed perishable articles, and fall within the exception. *Robinson v. Commonwealth Ins. Co.*, 3 Sumner 220; *Williams v. Cole*, 16 Maine 207.

In *Baker v. Ludlow*, 2 John's Cas. 289, the court said: "The subsequent words, 'all other articles perishable,' &c., are not applicable to the articles previously enumerated, nor can they hands, and, therefore, is clearly *pro tanto* indemnified, and cannot collect of the underwriter a sum of money, to be recovered back by the underwriter of himself. *Note to 2d Ed.*

repel the implication arising from the enumeration of them.

There can be no constructive total loss of memorandum articles, the underwriters being liable only in the event of a total physical destruction of the object insured, or a total destruction of value.

The rule of law is now well settled that, under an insurance upon an article free from average, if by reason of the perils insured against, it is placed in such a condition that, in consequence of inevitable deterioration or decay, it cannot be carried to the port of destination, but will necessarily, before the completion of the voyage, be wholly destroyed, and it is accordingly sold at an intermediate port, this will constitute a total loss within the true intent and meaning of the memorandum clause. The contract with the underwriters on a cargo for a voyage is, that the goods shall arrive at the port of destination uninjured by the perils of the sea; and in case of memorandum articles, that they shall then exist *in specie*, though partially injured or destroyed. If, therefore, by reason of the perils insured against, it is rendered certain in the course of the voyage that the article insured will inevitably perish or waste away, or that on arrival it will cease to exist, it is a total loss under the memorandum clause; and a sale of the article at an intermediate port, in which the vessel is by reason of distress, will be justified, and the proceeds will become a salvage for the benefit of the party who is to bear the loss. In such case it is clear that the loss is total, because, if the voyage had been pursued and completed, the articles insured would have ceased to exist, and thus been totally lost, within the meaning of the policy, at the port of destination. The sale at the intermediate port does not at all change the rights of the parties under the policy, but saves something for the benefit of the insurers, which would otherwise be wholly lost.\*

According to the English law, and usage among underwriters, the assured cannot claim reimbursement from the underwriters for expenses incurred to avert a loss on memorandum articles, under the clause authorizing him to sue, labor and

\* So held in *De Peyster, et al. v. Sun Mutual Ins. Co.* In this case, Grover, J., delivering the opinion of the Court, remarked: "The law in this State (New York) is settled, that there can be no recovery in case of loss of memorandum articles, when any portion thereof arrives in specie at

travel for the safety of the property at the expense of the underwriters, unless a *total* loss of the whole subject had been impending. And it is evident the same principle would apply to the exception of loss, under five, ten, twenty, or any other rate per cent., in respect to charges incurred to prevent the loss from exceeding the rate per cent. of the exception.

*What is the effect of the clause limiting the liability of the underwriters to a certain amount?*

The policies in general use in the United States, stipulate that "no partial loss or particular average shall in any case be paid, unless amounting to *five per cent.*"

The intention of this restricting warranty is obvious. It is to protect the underwriters against trifling and frivolous claims. Had it not been introduced into the policy, the most vexatious demands might be made upon the underwriters. Not a ship that came into port at the completion of her voyage, but might find some petty repair to effect at the underwriters' cost. And no vigilance would suffice to defend the insurers from imposition, if claims were allowed to be unlimited as to extent. In order, therefore, to avoid constant petty demands upon them for equivocal damage, and to confine their liability to *bona fide* claims, a line was drawn and an arbitrary proportion was established, the tendency of which would be to dismiss claims and attempts at claims by relieving the underwriters from them if the repairs of damage fell below the limit of five per cent. on the declared value of the ship in the policy. It was not intended, however, to apply to general average contribution, for that was not open to the same objection; a claim on this account was more likely to be genuine; and by not limiting the proportion to a definite ratio, no inducement was held out to any party concerned to run up expenses where they could the port of destination, although possessing no value there. While any portion of such article remains in species, capable of being transported to the terminus of the voyage, and within the control of the assured, he cannot recover for a total destruction of a portion of the property, or for the loss of value, however serious such loss may be. The English law differs in this respect, that by the latter, when there is a total destruction of a distinct portion of the property insured, a recovery *pro rata* may be had. The English rule makes the insurer responsible when it becomes impossible from any of the perils covered by the policy to transport the property to its port of destination. The same doctrine is held by the Supreme Court of the United States, also by the

be avoided. Accordingly the underwriters are, in all cases, liable to the payment of general average, whatever may be the amount.

As we have seen, *general average repairs may be added to partial loss repairs, to bring the partial loss up to the stipulated per centage.*

Among the questions which have arisen in construing exceptions, one of the most important is, *whether successive losses may be added together to make up the required per centage.* The weight of both reason and authority seem to lead to the conclusion that successive losses may be so added, and that the underwriters are liable if the aggregate equals the five or other per cent. required. *Blackett v. Assurance Co.*, 2 Crompton & Jervis 251.

If different articles are insured in the same policy under one valuation, free from average under a certain per cent., it has been held there must be a loss equal to the per centage on the whole valuation; but if the articles are separately valued, a loss on one equal to the specified per centage on its value, renders the underwriters liable. *Ocean Ins. Co. v. Carrington*, 3 Comm. 357.

A similar question arises where a cargo consisting of bales, packages, or parcels of the same kind of goods, is insured against total loss only, or free from average under a certain per cent. In England the law seems to be that if the packages are separately valued, the assured can recover for all that are totally lost, but not otherwise. 36 Eng. L. & Eq. 198. Some adjusters contend that the rule is the same in this country, but it has been decided otherwise in Pennsylvania. *Newlin v. Insurance Co.*, 20 Penn. State 312. In this case insurance was effected on 104 bales of cotton, valued at \$50 per bale. There was a clause in the policy exempting the underwriters from partial loss under five per cent. Four bales were lost by the perils of the sea, and the assured claimed to recover on the ground that each bale being separately valued, the contract was to be considered as an insurance on each bale, but the court

Supreme Court of Maine. The principle I think sound. By the contract, the assured undertakes that the property shall be transported to its place of destination, and but for the qualifying force of the memorandum clause, he would be bound for its delivery uninjured by any of the perils

held that the underwriters were not liable. In *Kettell v. Alliance Ins. Co.*, Sup. Jud. Ct., Mass. T. 1858, *Shaw*, C. J., speaking of the rule which allows a recovery for a total loss of part, said: "It is admissible only, we think, when goods of the same kind are separately invoiced and insured, or when insurance is made specifically upon bales, boxes, or other packages, valued and insured by the bale or package, or number of packages in parcels less than the whole." Whatever the law may be where each parcel is separately valued, it is certain in this country, that where this is not the case, there can be no total loss of part. *Biayo v. Chesapeake Ins. Co.*, 7 Cranch. 415; *Morean v. United States Ins. Co.*, 1 Wheat. 219, *Wadsworth v. Pacific Ins. Co.*, 4 Wend. 33.

*What is the effect of the clause respecting Stranding?*

Mr. Parsons (vol. 2, p. 266) gives a clear definition, as follows. "As the memorandum articles are all of them of a perishable nature, and especially liable to a partial deterioration, insurers desired, many years since, to protect themselves from liability for injury to them, unless it was certain that this was not caused by inherent defect or decay. For this purpose, it was provided that the memorandum articles should be 'free from average, unless general, or the ship be stranded.'

"The original intention of this provision cannot be doubted. It was, that the insurers should not be held for any partial loss on these perishable articles, unless this was caused by a peril of such a nature, as to exclude all probability that the loss was due to the nature of the goods. Such a loss it was intended to designate by the word 'stranding,' and we may suppose the word to have been equivalent in the minds of those who first used it, to 'wreck.'

"It seems certain that the insurers intended to say, that ~~embraced in the within policy.~~ When the delivery of any portion at its port of destination becomes impossible, by any of the perils assumed by the insurer, his contract is broken. The voyage is lost. The case comes within the direct terms upon which the assurer has consented to become bound. The loss is within the meaning of the contract, absolutely total. The assured is absolutely prevented from receiving any portion of the goods at the place where the assurer has undertaken that he shall receive them. This gives a right of recovery." Note to 2d Ed.

they should not be liable for a partial loss on these goods, unless the ship was stranded or wrecked, and the goods thereby injured. The courts, however, did not incline to this view, but adopted the more literal construction and interpretation of the phrase, and a meaning was given to it, which was far from that originally intended.

"Thus, it seems now to be settled that the phrase is to be read, as if it ran thus: 'goods to be free, etc., *unless* the ship be stranded.' And then this stranding is to be regarded as a condition, and if it takes place, the whole effect of the provision is exhausted, and the insurers are liable, *if there once be a stranding*, for any partial loss, in the same manner as if the provision had no existence. The reason given for this is, that in case of stranding and partial loss, it would be impossible, or very difficult at least, to say how much of the injury to the goods arose from their own perishableness, and how much from the stranding. This construction is now well settled;" and Mr. Parsons adds: "but we do not think that it rests on good grounds." See also, authorities cited by Mr. Parsons, page 267.

The effect of stranding, therefore, when established, is to destroy the warranty. The conditions necessary to a stranding, are: 1st—The course of the ship must be stopped for a *definite portion of time*. 2d—The ship must be stopped or her situation altered by some *accidental* occurrence; the grounding or stoppage must be unusual. 3d—She must be *out of her course*; or she must be in a situation she ought not to be in by the ordinary circumstances of the voyage, &c. 4th—When stopped, she must *not be at all water-borne*, she must be actually at rest on the bottom, whatever it may be.

These appear to be the important features of an established strand. If the ship be literally stranded, that is enough, without much reference to the length of time that she remains on shore, or any regard to the effect of this stoppage. It is not enough, however, that the ship did just "touch and go"; her course must be arrested, and all progressive motion must cease.

But if, after a few minutes delay upon the rock or strand, she is thrown off by the wind or tide, or dragged off by human aid, still she was "stranded" within the legal meaning of the policy; and this, although neither ship nor cargo were at all injured. *Baker v. Towry*, 1 Stark 436; *Dobson v. Bolton, Marsh, Ins.* 239; *Park, Ins.* 148 n.

It is not a "stranding" if the vessel takes the ground in a tide harbor, in any usual way, and place, merely by the effect of the tides. But if extraordinary circumstances or agencies mingle with these natural and customary events, and give to them their destructive or injurious efficacy, so that the vessel comes to the ground in an unusual and perilous way, this then is held to be a "stranding."

#### PARTIAL LOSS OF FREIGHT.

A partial loss on freight is occasioned by loss of the ship after a part of the voyage is performed, which makes it necessary to hire another ship to carry on the cargo to the port of destination, in order to earn freight; or a loss of a part of the cargo, whereby the ship is prevented from earning a part of her freight.

There is no difficulty in adjusting a partial loss on freight, since the whole amount of interest is definitely fixed by the bills of lading, or charter-party; or, in case of the ship and cargo belonging to the assured, the amount is determined by estimation, according to the current rate of freight for the same voyage; and the whole amount of the interest, and that of the loss, being ascertained, the rate per cent. of the loss is readily found.

With regard to interest in freight on policies, it has been treated in a more liberal manner than any other subject of insurance. In all other insurable interests the true value, with a little margin for profit, is the extent of insurability. But with freight a sum is allowed to be covered larger than can

ever be realized by the safe arrival of the ship at her destination. The gross amount may be insured—but the gross amount can in no case be secured by a vessel completing her voyage. Directly a charter is made, the freight, the subject of that charter, begins to melt away by ordinary means. First there is the commission for procuring freight; then port charges whilst in harbor. Directly the ship sails, come pilotage &c. From the first day the crew arrive on board their wages commence and continue day by day to lessen the freight in an ordinary or natural manner. The expenses of taking in and landing the cargo are often at the ship's charge; and there must be dunnage provided and frequently ballast. It is clearly impossible that a ship can ever save her whole freight under the most favorable circumstances. It is more than likely that she will never realize above half of it. So that it is clear, in any case (speaking of a single voyage), where an owner is fully insured for his freight, the loss of his ship at any point, even at the very outset of the voyage, is better for him than her safe arrival. The policy will always in such a case give him more than a completed voyage. This is contrary to the regulations relating to interest in other subjects of insurance. Looking to net results, a man may insure more than he can ever at the best of times receive if he be uninsured; but discarding the notion of profit, and regarding the actual freight an owner is to receive if his vessel arrive safely at her destination, it will be seen to be quite just that he should be able to protect himself to the extent of the entire sum contingent on the completion or non-completion of the voyage.

It may, however, seem an anomaly that whilst all the incidental and absolutely certain expenses of the voyage are to have no effect in reducing an owner's insurable interest, they are to give him the fullest assistance in reducing the amount on which he contributes in respect of his freight in case of general average. The freight is to be diminished by every one of the expenses named, and, as according to the custom in New York, only one half the gross amount contributes, so the con-

tributory value of freight is generally insignificant in comparison with that of the ship and cargo. The hardship of this lies on the ship and cargo, because they contribute as much more in proportion as the freight contributes less. To the underwriters on freight it is a great relief, as they never are called upon to contribute on the amount which they really have at risk. For their risk always continues the same, viz., the sum insured.

The interest on a freight policy has its inception, that is, begins, when a ship commences taking in her cargo. Should the vessel be lost during the process, even when she has only the minor part of her lading on board, the underwriters would be liable for a loss on the whole sum insured.

If the supercargo or captain sells goods at some intermediate port, on account of sea-damage, deterioration occasioned by the qualities of the articles, or other cause, which might probably diminish or destroy their value in the subsequent part of the voyage, but still leave them specifically remaining, the entire freight to the port of destination will be due on such articles, if the master is ready to carry them on immediately, or within a reasonable time, but is prevented doing so by an acceptance of the cargo, or waiver of performance by the shipper, or his agent, at the port of distress; if, however, there be no such acceptance or waiver, the owner of the vessel is not entitled to freight, notwithstanding the damaged state of the cargo justified its sale by the master at such port of distress. It is well settled, that the master is not the agent of the owners of the cargo, with power to relieve the ship-owners from the obligation to convey according to the contract of affreightment. 18 Mees & Welsby, 230. The master is the servant of the owners, and bound to earn all the freight he lawfully can. If he neglects to ship, or carry forward damaged goods, when re-shipment is practicable, the loss arising from such neglect is not to be borne by the underwriters of freight. As well might the master leave sound goods at a port of necessity and claim the freight of the insurers of that interest.

Since the ship-owner does not, by merely agreeing to transport an article, take the risk of its deterioration in value by reason of perils of the seas, or the qualities of the article, if the specific goods arrive, though, in consequence of sea-damage or otherwise, they are of no value, still the whole freight is due, and accordingly the assured on freight has no claim on the underwriters for any loss. Phillips on Ins. vol. 2 § 1445.

If the ship is disabled and another might be procured within a reasonable distance, and on such terms as to leave an excess of the original freight over that stipulated with the substituted vessel, or agreed price of other transportation, *the loss is the amount that must have been so paid*, and the underwriters are not affected by the neglect of the master to forward the cargo. Ibid. § 1444.

Mr. Phillips, says: "If the goods sold at an intermediate port might have been carried on without damage to the ship or crew, and delivered at the port of destination *in specie*, and not so changed by the ordinary action of the elements, or in consequence of the previous sea-damage, as to have lost their identity, though of no value, and accordingly so that full freight should be due, the sale should be presumed to be made by the request and for the benefit of the shipper, and full freight be allowed, and, therefore, the underwriters on freight should not be liable for any loss."

"Where there would be danger of disease or spontaneous ignition if the goods sold by the master at an intermediate port, on account of damage or the quality of the articles, had been carried on, this is ground of presumption of consent and election by the ship-owner that the sale should be made so far as he is concerned, without discharging the underwriters on freight from a claim for partial loss, where the damage is occasioned by a peril insured against, and without discharging his claim on the shipper for full freight, where the damage is not by a peril of the sea." 2d Phillips, p. 206.

In Jordan v. Warren Ins. Co., 1 Story, 842, insurance was effected on freight from New Orleans to Havre. Soon after sail-

ing, the vessel met with disaster, and was obliged to put back to New Orleans. The cargo was found to be so much damaged that it would have taken several months to have put it in a condition for re-shipment, and it was sold by consent. Mr. Justice *Story* held, that the master had a right to wait till the goods were prepared for re-shipment, and then to take them on to their port of destination, if they would arrive there *in specie*, and not having done so, the underwriters were not liable. See also, *Herbert v. Halleck*, 3 Johns, Cas. 93; *Saltus v. Ocean Ins. Co.*, 14 Johns, 138.

The *master* has a right to hold a cargo once shipped on board his vessel, and to carry it to its destination, although circumstances may occur which will cause great delay and perhaps great diminution of value. The contract of affreightment is an entire contract, and no freight is earned until the carriage has been performed, unless performance has been excused by the voluntary acceptance of the goods by the owner at the intermediate port. But the master will say; suppose the cargo on being discharged at the intermediate port, is found on examination and survey, to be in such an advancing state of decay that it would be utterly worthless at the port of destination if carried on, and the owners or underwriters are at too great a distance to be consulted; would it not be my duty, under such circumstances, to sell it at the intermediate port; and if I do so, when it could have been taken forward without danger to the ship or crew, and with every probability of its arrival *in specie*, (being articles of the same kind as those shipped, and not mere remains of its destruction or decay,) would not the consent of the shipper and his consequent obligation to pay the freight which would have been earned by carrying on the goods be presumed; or in other words, will freight be earned, and if not, will my owners suffer by my act, or can they recover from their underwriters on freight?

There is considerable diversity of opinion both judicially and among merchants, as to whether the consent of the owner of the cargo should be presumed in this case; but it is settled law,

that the owner of the goods is not liable under such circumstances for the payment of freight, either partial or full. In the case of the ship "*Tigress*" decided by Justice *Strong*, in the Supreme Court of Pennsylvania, February, 1860, 26,221 bushels Corn were shipped at Philadelphia on board the "*Tigress*" for Liverpool. The vessel left port in charge of a pilot, and within a few hours after her departure, while passing down the Delaware, encountered floating logs of ice, by which the bow port was stove in. She then began to sink, and in order to save her she was stranded. The corn was taken out by lighters, wet and greatly damaged, brought back to Philadelphia, and sold by order of the master for the *benefit of whom it might concern*. It was in such a damaged condition as to render a sale rightful. The vessel was brought back to Philadelphia, and repaired, and afterwards she sailed on another voyage. The question, therefore, was, whether upon these facts, the vessel earned freight upon the corn thus damaged, brought back and sold by order of the master, and it was a question between the shipper and the owner of the vessel. *Strong*, J., said, "The general principle undoubtedly is, that the contract of affreightment is an entire contract, and that no freight is earned until the carriage has been performed, unless performance has been excused by the owner of the cargo. As between the owners of the cargo and the owners of the ship, the delivery of the cargo at the port of destination is a condition precedent to the right to freight. The shipper may indeed relieve the owner of the ship from the obligation to deliver the goods at the port of destination. Then he is liable either for *pro rata* or full freight. But I apprehend, the shipper or owner of the goods is never liable for full or partial freight upon goods not delivered at the port of destination, unless the failure to deliver has been occasioned, at least in part, by his act. I agree that an express arrangement to discharge the ship-owner from performance of his contract is not necessary; such discharge may be inferred from the acts of the owner of the cargo, but in the absence of any act of his, there can be no freight earned

without performance of the contract of carriage. That the master is not the agent of the owners of the cargo, with power to relieve the ship-owners from their obligation to convey according to the contract of affreightment, is now settled both in England and in this country. It is hardly necessary to say that the receipt by the plaintiffs of a portion of the proceeds of sale of the cargo, or the bringing suit for them, amount to no voluntary acceptance of the cargo at Philadelphia, and therefore, to no waiver of the right to insist that it should be delivered at Liverpool according to the contract of affreightment, before freight should become due. The cases show that no such effect can be attributed to such acts of the owners of the cargo." See also Vlierbloom v. Chapman, 13 Mees and Welsby, 230; Hurton v. The Union Ins. Co., 1 Wash. Cir. C. Rep., 530; The Ann D. Richardson, 1 Abbotts Reps., 499.

If the specific goods arrive, though in consequence of sea-damage or otherwise, they are of no value, still the whole freight is due, and accordingly if they are sold at an intermediate port when they could have been carried on without danger to the vessel or crew, and without being so damaged on arrival as to have lost their identity, the loss of freight, will be a loss by the master's neglect, and the assured on freight will have no claim on the underwriters for any loss.

It is often said in books, that where cargo is delivered to the owner at the intermediate port, or sold for his benefit, a *pro rata* freight is due. *Pro rata* freight has no existence in law, or in commercial usage, except as a *compromise* made by the owner of a cargo with the owner of a ship, where the former agrees to receive his goods short of their port of destination from some cause, when he agrees to give a partial freight, and the ship-owner agrees to accept it and deliver the goods. But in law, insurance, and the adjustment of averages, there is no such thing as *pro rata* freight. No such thing can be demanded or recovered as a legal right dependent upon the contract of affreightment, it must be a question of *full freight* or of no freight earned.

If the goods are delivered to the shipper without demand and payment of the freight, for which the shipper is liable, and for payment of which the goods are subject to a lien, this does not affect the underwriters on freight, who do not guaranty the payment, but only that the earning of it shall not be prevented by the perils insured against.

As a sale of cargo at an intermediate port entails a loss of freight, the master should try to reduce the loss by procuring, if possible, fresh goods to fill up the vacancy in his lading.

*Though the underwriter upon freight will not be liable for a loss of freight, unless the delivery of the goods is prevented by a peril insured against, and though the shipper will not be liable to pay freight, unless the goods are delivered at the port of destination, or he voluntarily accepts them short of that port, yet where the goods are so much injured that, though capable of being carried to their port of destination and there landed, they will endanger the safety as well of the ship as of the goods, or the goods will become perfectly worthless on arrival at the port of destination, it is the duty of the master, exercising a sound discretion, for the benefit of all concerned, and especially for the shippers of the cargo, to sell the same at the port where the necessity arises. But, in general, it is his duty to carry the cargo to its port of destination, if the goods can there be delivered in a merchantable though damaged state.* Hugg v. Augusta Ins. Co., 7 Howard 595; Jordan v. Warren Ins. Co., 1 Story 343; Miston v. Lord, 1 Blatchford 355.

If the ship is lost, or cannot be repaired, nor another procured, if the cargo is not perishable, it is the duty of the master, ordinarily, not to sell the cargo, but to store it, and await the orders of the shippers or underwriters, who ought to be consulted without delay.

## CHAPTER XIV.

### TOTAL LOSS AND ABANDONMENT.

A *total loss*, in insurance law, is one on account of which the assured is entitled to recover from the underwriter the whole amount insured by the policy on the subject lost.

There are two kinds of total loss; one *absolute* or *actual*, the other *constructive* or *technical*.

An absolute total loss gives the assured a right to claim from the underwriter, the whole amount of his subscription without notice of abandonment. The great principle on which all the cases of absolute total loss depend, appears to be this—the *impossibility*, owing to the perils insured against, of ever procuring the arrival of the thing insured according to the terms of the policy. If, by reason of those perils operating on the subject insured, the assured is permanently and irretrievably deprived not only of all present possession and control over it, but of all reasonable hope or possibility of ever ultimately recovering possession of, or further prosecuting the adventure upon it, that is a case of absolute total loss; in such case the loss is absolutely and of itself total, independently of the election of the assured to treat it as such; and he is, therefore, entitled to recover from the underwriter the whole amount of his insurance without giving any notice of abandonment.

A constructive or technical total loss is one in which some

part or remnant of the subject insured is surviving. When such a state of things exists, that the property cannot be retrieved, except at an outlay as great as, or greater than, the original cost, or the value when it is rescued, the loss is constructively total.

The expenses of restoring what has been destroyed, and of repairing what has been injured about a ship, are the most common form of a ship's constructive death. The difficulties of carrying on repairs, or of procuring materials for those repairs; the inability to raise means for paying the necessary disbursements arising in a foreign port; or the exorbitant rate of interest demanded for money required for such disbursements, are the usual proximate causes which lead to the abandonment of a ship to her insurers.

Since wager-policies are no longer tolerated, a contract of insurance is emphatically and purely a contract of indemnity, and the interests of commerce and of the public require that its true character as such should never be forgotten, and in all doubtful cases be strictly maintained. Hence, the breaking up of a voyage ought never to be sanctioned when it is certain that the ship-owner, if uninsured, would have continued to prosecute it; nor, consequently, the abandonment of a vessel as innavigable ever be sustained when it is certain that the owner, if uninsured, would have elected to repair. When the policy is valued, it may frequently happen that the breaking up of a voyage, if a total loss may be recovered, would be far more advantageous to the ship-owner than its successful termination. It is plain, therefore, that in these cases, there is a direct temptation to dishonesty and fraud.

Whether a partial loss may be converted by abandonment into a constructive total loss, must necessarily depend, in almost all cases, upon the amount of the injury. When the vessel is stranded, the question, whether the loss shall be deemed partial, or so far total as to warrant an abandonment, will depend upon the nature and extent of the peril in which the vessel is involved, and the probable difficulty, hazard and expense of at-

tempting to deliver and repair her. When it appears that by proper exertions, she might have been gotten off, and have been fully repaired at a moderate cost, the abandonment is void, and a partial loss only can be recovered; and to warrant the recovery of a total loss, it must be proved that the delivery of the vessel from the peril was, upon reasonable grounds, judged to be impracticable, or not to be effected, unless at an expense that would absorb her value. In other words, it must be proved, that a loss actually total, although not then existing, was, in the highest degree, probable. *Fontaine v. Phœnix Ins. Co.*, 11 John's 295; The "Sarah Ann," 2 Sumner 255.

It is a fixed rule, that if the ship be injured by the perils insured against so as to require repairs to the extent of more than half her value (nothing in the policy to the contrary), the assured is entitled to abandon as for a total loss. *Deblois v. Ocean Ins. Co.*, 16 Pick. 303, 309, 310.

The policies in use in New York and New England, however, require that the ship must receive injury to the amount of three-quarters of her insured value, to enable the owner to abandon her to the underwriters and claim as for a total loss. Hence, if a vessel is valued at \$20,000, and it turns out by survey and estimate, that it will cost to repair her \$12,000, and it appears that the wages and provisions of the crew, port charges, &c., will be \$3,000. Under an adjustment as of a partial loss—

|                                |           |          |
|--------------------------------|-----------|----------|
| The cost of repairs being      | - - - - - | \$12,000 |
| One third is deducted for new, | - - - - - | 4,000    |
| Leaving                        | - - - - - | \$8,000  |

The insured value being \$20,000, half is \$10,000, and hence there can be no abandonment either under a New York or New England policy.

The expense of repairs is, in general, to be estimated at the place where they were actually made, or at which they would

have been made, if made at all. But if a vessel can be partially repaired at a port of distress, so that she can be taken to another port and then fully repaired at a less expense than at the first port, it would seem to be the duty of the assured to do this, and consequently, the underwriters are only liable for the lesser expense. *Center v. American Ins. Co.*, 7 Cow. 564. But the cost of navigating the vessel from the port of distress to the port where the final repairs are to be made is to be added, if such a port is one to which the vessel would not have gone in the course of the voyage. *Lincoln v. Hope Ins. Co.*, Sup. Jud. Ct., Mass., March T., 1857.

If at the time the abandonment is made, the master has commenced to repair the vessel, the abandonment is invalid, and the assured can only recover for the expense incurred, although it exceeds half the value of the vessel. 3 Mason 429; 3 Wend. 658.\* The authorities are, however, conflicting as to whether the insurer has the right, in case of loss to offer to repair the vessel, and thus to escape liability for more than the actual cost. If the insurer repairs, it seems that he must do it in a reasonable time, and he must tender back the vessel in as good condition as she was in before the accident, or supply or pay for any deficiencies, and it has been held that if in repairing, expenses are necessarily incurred by the underwriters for which they would not have been liable in an action on the policy, they may recover the amount of them from the assured. *Ritchie v. United States Ins. Co.*, 5 S. & R. 501; *Hart v. Delaware Ins. Co.*, 2 Wash. C. C. 346; *Peele v. Merchants' Ins. Co.*, 3 Mason 27; *Peele v. Suffolk Ins. Co.*, 7 Pick. 254; *Reynolds v. Ocean Ins. Co.*, 22 Pick. 191, 197; *Commonwealth Ins. Co. v. Chase*, 20 Pick. 142.

There may, perhaps, be a total loss by the sale of the ship by the master. He has the power to sell only from necessity, and

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\* This proceeds on the ground that the state of facts existing at the time of the abandonment determines the right of the assured to abandon.

In *Saunders v. San Mutual Ins. Co.*, 2 Sandf. 482, it was held that if the repairs are made merely to carry the vessel from one port to another, in order to make full repairs at the latter port, the right to abandon is not gone.

the sale is valid, only when made from an actual and stringent necessity; but this necessity must be judged of from the facts and probabilities existing at the time and apparent to the master, and not by the result. A sale will only be justifiable, when it is clear, that under like circumstances, a prudent owner, if on the spot, and uninsured, in the exercise of a sound judgment, would have broken up the voyage and sold the ship. In the case of Patapsco Ins. Co. v. Southgate, 5 Peters' 604, 621, the court held, "the professional skill, the due and proper diligence of the master, his opinion of the necessity and the benefit that would result from the sale to all concerned, would not justify it, unless the circumstances under which the vessel was placed rendered the sale necessary." Chief J. Tindal, in the course of his charge to the jury, in the case of Somers v. Suerue, says—"If you think that if the owner himself had been on the spot uninsured, he, in the exercise of a sound discretion, would have repaired the vessel, or that, if an agent of the underwriters had been there, he, exercising said discretion, would have repaired, then the master ought to have done so." A ship insured in Boston, owned partly in Boston, but chiefly in New Orleans, struck on a shoal on the coast of Florida, but by the assistance of wreckers she was got off. She arrived at Key West on 23d February; she did not leak, and she might have remained at Key West in safety until notice of the disaster could have been sent to Boston; notice was sent to the part-owners at New Orleans, and one of them arrived at Key West on the 11th March; a survey was then had and the vessel was condemned as unworthy of being repaired, and on the 21st she was sold. The expense of repairing her at Key West would have exceeded fifty per cent. on her value, but at New Orleans or Boston (to either of these ports she might have proceeded, and to the latter of which she did in fact proceed, after the sale, with the same master), the expense would have been less than fifty per cent. It was held, the sale was not necessary, and the underwriters were not affected by it. Hall v. Franklin Ins. Co., 9 Pick. 466. The master is not at liberty to sell with-

out notice to, or the advice of, the owners, provided he be so near them that he can delay the sale for this purpose without endangering a greater loss. And if he cannot thus communicate with his owners, but knows that the ship is insured, and can communicate with the insurers, he is bound to do so. If in a port where the assured should have funds, the master sells the vessel to prevent a forced sale by process of law to pay off workmen who have a lien on the vessel, the assured cannot abandon, because the loss was caused by his neglect. *Ruckman v. Merchants' Louisville Ins. Co.*, 5 Duer 342, 368. And the master cannot sell if the vessel might be repaired but for the negligence of the resident agents of the owner. *Tanner v. Bennett, Ryan & M.* 182. And if the master is part owner, he has no greater power to sell, so as to affect the underwriters, than if he were the master only. *Prince v. Ocean Ins. Co.*, 40 Maine 481. If a master sells, he cannot buy; and if the port-warden, surveyor, or any person authorizing or officially promoting the sale, should buy, it would be a most suspicious circumstance, although not perhaps sufficient, of itself, to avoid the sale. *Church v. Marine Ins. Co.*, 1 Mason 341. The mere fact of sale, says Mr. Arnould, 1087, irrespective of the state of the ship which made it necessary, can never give the assured the right to abandon. The same doctrine is held by Mr. Phillips, § 1571; and Judge Duer remarks—"the language of these judicious writers is fully borne out by the cases to which they refer." *Ruckman v. M. L. Ins. Co.*, 5 Duer 366. The damage must not be caused by any inherent defect or defective quality in the thing insured. 1 Phillips, § 1089. Where the loss is not proximately caused by the perils insured against, but is directly referable to the negligence of the assured or his agents, underwriters are not responsible. 2 Arnould 775, and cases there cited.

The Schooner Margaret Hopping, on a voyage from New York to San Francisco, put into Valparaiso as a port of necessity for repairs; the master was unable to raise the necessary funds on bottomry, and abandoned and sold his vessel without consult-

ing his owners. On these two points Judge Duer says: "For aught that appears, the condition of the vessel at Valparaiso was one of entire safety, and it is proved that the master might have communicated with his owner in this city, by the Panama route, and have received an answer within eighty, at the utmost ninety, days from the date of his letter. We are bound to presume that the plaintiff, upon being informed of the exact situation of the vessel, and of the inability of the master to make the repairs she needed, could and would have remitted to him the necessary funds, either in bills, or by opening a credit in his favor with a house in Valparaiso. Let an additional month be allowed for repairing the vessel, and another for the time that would have elapsed from the arrival of the vessel at Valparaiso, until the failure of the master to raise the funds that he required; we have thus five months as the full period that would have elapsed, had the course that has been indicated been followed, from the first arrival of the vessel at Valparaiso until she would have been fitted by sufficient repairs to resume the voyage. And the question, therefore, is whether the fact that this, or even a greater delay, in the resumption of the voyage, must have intervened, had the master elected to remain at Valparaiso until he obtained from his owner the funds that he required, created of itself, independent of any other circumstance, a constructive total loss, that warranted the master in breaking up the voyage, and justified an abandonment by his owner. *We are satisfied, both on principle and upon the authorities, that to this very material question, no other than a negative answer can be given.* The mere continuance of a disabled vessel in a port of necessity, where she is in actual safety, and is not exposed to further peril, furnishes no evidence whatever that in the event, the partial loss will become total; and it is doubtless for this reason, that it has been frequently decided that a suspension of the voyage, merely temporary, is in no case a valid ground of abandonment of the vessel. In the case of Anderson v. Wallis (2 M. & Sel. 240), and Evertts v. Smith (Id. 247), the voyage was suspended by the detention of the

vessel in port for nearly *six* months; and yet in each case *the abandonment was held to be void*. It is a necessary conclusion from the remarks we have made and the authority we have cited, that the delay in the prosecution of the voyage, that would have resulted from the detention of the vessel for repairs, even combined with the fact that the objects of the voyage as a mercantile adventure were wholly defeated, were insufficient to justify the proceedings of the master, and, consequently, to warrant the claim of the assured for a total loss. Looking to these facts alone, we are clearly of opinion that the case belongs to the class of those in which it has been held that it was the plain *duty of the master* to have communicated with his owner before he resolved on breaking up the voyage and selling the ship, and that his neglect in the performance of this duty entitles his owners to repudiate his acts, and we agree entirely with Mr. Phillips, that in such cases it is a partial loss only, that can be recovered from the underwriters." In this case, where the ship was lying safely at anchor, Judge Duer says—"the plaintiff had no right to abandon until he was informed that the voyage was broken up and the vessel sold, in consequence of the inability of the master to raise funds for the necessary repairs." Ruckman v. M. L. Ins. Co., 5 Duer 366.

It is for the owner to abandon if he elects so to do, but not the master; the master has no right to abandon, but must go on and save the property to the best advantage, and the result must show for whom he has acted; he is both agent for the owners and underwriters, if the facts of the case justify an abandonment, and it is made in due season, then the master becomes agent for the underwriters, but otherwise he is agent for the owners.

#### ABANDONMENT OF THE CARGO.

Goods are totally lost if destroyed by a peril insured against; or if injured to such an extent and in such way as to make

them of little or no value for the purpose for which they were intended; or if the voyage upon which the insurance on the goods is made, is entirely broken up. But if the voyage is broken up, merely for the season, as where the vessel at an intermediate port requires extensive repairs, or where the ship is lost, but the goods are saved, and a delay of months ensues, while waiting for means of forwarding them, the insured cannot abandon. 2 Parsons' Maritime Law, page 370; Manning v. Newnham, 3 Doug. 130; Ruckman v. Merchants' L. Ins. Co., 5 Duer 342, 365; Anderson v. Wallis, 2 M. & S., 240; Hunt v. Royal Exch. Ass. Co., 5 M. & S. 47.

Where the original ship is disabled in the course of the voyage, and no other can be procured at the port of the casualty, or any neighboring port, the master has a right, where the cargo is of a perishable nature and sea-damaged, to sell it at such port, for the benefit of all concerned; and the assured on goods, in like case, may abandon, and recover as for a total loss. Arnould on Ins., vol. 2, p. 1122; Schieffelin v. N. York Ins Co., 9 John 21, 28; Robinson v. Commonwealth Ins. Co., 3 Sumner 224. Where, however, the original ship can be repaired, with any prospect of sending on the cargo, or what remains of it, in a marketable state to its port of destination, or where another ship can be procured, either at the same or a contiguous port, without any very extraordinary delay or sacrifice, the master is, at all events, empowered, if not bound, to send it on; nor can the assured on goods abandon and recover as for a total loss. Saltus v. Ocean Ins. Co., 12 John 107; Treadwell v. Union Ins. Co., 6 Cowen 276; Arnould, p. 187, 188; 3 Kent (5th ed.) 212, 213; Abbott on Shipp. (6th Am. ed.) 365, 366. In Bryant v. Commonwealth Ins. Co., 13 Pick. 543, a cargo was insured from Havana to Castine, in Maine, and was wrecked on the coast of Virginia, about forty miles from Norfolk, but was taken from the vessel without being damaged, and might have been sent by land to Norfolk, and thence by water to Castine, for less than fifty per cent. of its value; but the master, instead of sending it to its place of destination, sold it on the beach;

it was held, that the insurers were not liable for a total loss. It seems that during such transportation by land, the cargo would be at the risk of the underwriters.

It is the duty of the master to tranship the goods, or send them on, even by land carriage, if he can with reasonable endeavors; if he fail to do this and a total loss ensues, this is a loss by the misconduct of the master, and if the underwriters have insured against that, they are answerable. But the shippers have a right to look to the owner for compensation for damage sustained by the wrong doing of the master; and this right or claim passes to the underwriters by abandonment.

Mr. *Parsons* (vol. 2, p. 372) says—"Generally, if the master could have transhipped the goods, and did not, the shipper cannot abandon as for a total loss. And if a part only be saved in a condition to be transhipped, or forwarded, whether it will be the duty of the master to do so, must depend upon the quantity and value of what is saved, and the facilities for forwarding it, and the probability of its perishing or greatly deteriorating on the way; as he would not be bound to discharge this duty where it was of no practical benefit, or would be to the detriment of the parties concerned."

If the goods insured remain *in specie*, but so injured that they cannot be carried with safety, or any hope of their arriving in a merchantable condition, to their destined port, it is the duty of the master as well as his right, to do the best he can with them at any intermediate port. If they are of any value, he should obtain this by a sale, and then the shippers may claim for a total loss transferring the proceeds by abandonment. This rule would apply, whatever be the cause of the injury, as a leak, or submersion, or a sudden shock by striking a shoal or rock, if the peril be insured against. But if the goods perish by natural decay or intrinsic defect, this is, of course, not at the risk of the underwriters. 2d Parsons, 873.

The fifty per cent. rule applies to the cargo, as well, and in the same way as to the ship. But in respect to the cargo, as

in respect to the ship, if there be a loss not actually total, but one which might be made constructively total, whatever remaining interest or property, or claim on account of the subject-matter of insurance, the owner may have, must be transferred by him by abandonment to the underwriters. And a general abandonment has here also, as in respect to the ship, the full effect of a universal transfer and cession.

If the vessel is wrecked at a distance from any market, and the goods are taken out and carried to a market and there sold, under circumstances which render the sale valid, the expenses of transporting the goods, and of the sale, are to be deducted from the gross proceeds of the sale to determine whether the loss has exceeded fifty per cent. *Kettell v. Alliance Ins. Co.*, Sup. Jud. Ct., Mass., Nov. T., 1857.

Mr. Arnould thus states the doctrine of constructive total loss, and right of sale of sea-damaged goods, as derivable from the cases, "That all the circumstances, in fact, are to be considered; and the true doctrine appears to be, that the master cannot sell, nor the assured recover as for a constructive total loss, if, upon the whole, it is reasonable, taking into view the nature and actual state of the cargo, together with the time, expense and risk of procuring the means of sending it on, that the master should hire another vessel for that purpose, or keep it till the original ship can be repaired; if it is not reasonable that he should do this—if, that is, a prudent owner being on the spot, and uninsured, would, in the exercise of the best and soundest judgment that could be formed under the circumstances, rather sell the cargo at the place of the casualty than attempt to forward it, the sale by the master will be justifiable, and the assured on giving timely notice of abandonment, may recover as for a total loss." *Arnould on Ins.*, vol. 2, 1123.

The power of the master to sell the cargo depends on exactly the same principles as the power to sell the ship, and like it, can only be exercised in cases of extreme necessity.

The present rule of the English courts is stated with much clearness by Lord *Abinger*, in the leading case on this subject.

Roux v. Salvador, 3 Bing., N. C., 266. "If the goods are of an imperishable nature, if the assured become possessed, or can have the control of them, if they have still an opportunity of sending them to their destination, the mere retardation of their arrival at their original port may be of no prejudice to them beyond the expense of re-shipment in another vessel. In such a case, the loss can be but a partial loss, and must be so deemed, even though the assured should, for some real or supposed advantage to themselves, elect to sell the goods where they have been landed, instead of taking measures to transmit them to their original destination. But if the goods once damaged by the perils of the sea, and necessarily landed before the termination of the voyage, are, by reason of that damage, in such a state, though the *species* be not utterly destroyed, that they cannot with safety be re-shipped into the same or any other vessel; if it be certain that, before the termination of the original voyage, the *species* itself would disappear, and the goods assume a new form, losing all their original character; if, though imperishable, they are in the hands of strangers not under the control of the assured; if, by any circumstances, over which he has no control, they can never, or within no assignable period, be brought to their original destination; in any of these cases the circumstance of their existing *in specie* at that forced termination of the risk, is of no importance. The loss is, in its nature, total to him who has no means of recovering his goods, whether his inability arises from their annihilation or from any other insuperable obstacle."

Before considering the cases where the assured may, and may not abandon and recover for a constructive total loss; we should have mentioned one fact about which there is no controversy, namely, that the terms "total loss," "total loss only," "free from average," "free from particular average," "not liable for partial loss," and "partial loss excepted," mean one and the same thing, whether *that* be actual or constructive total loss. Phillips on Ins., § 1767; Parsons' Maritime Law, vol. 2, p. 338; Murray v. Hatch, 6 Mass., 465; Buchanan v. Ocean Ins. Co., 6

Cowen 318, 331. We will now briefly state the American doctrine of loss, 1st, at the port of destination; and 2d, loss at an intermediate port. The rule in this country, is well settled that if the goods insured *arrive at the port of destination existing in specie*, the underwriters are not liable, although they are of no value whatever. In determining what is a total loss *at an intermediate port*, the rule is not so clearly and satisfactorily settled. In New York, the rule appears to be, that if the goods exist *in specie* at the intermediate port, the assured is not entitled to recover. But Mr. Parsons does not assent to the doctrine, that if the goods exist *in specie* at the intermediate port there is no total loss, he contends that this rule is not founded on principle; "for," he says, "the insurers guarantee that the goods shall arrive at the port of final destination *in specie*, and if, therefore, owing to the perils insured against, they cannot be carried forward so as to arrive *in specie*, the underwriters should be liable, notwithstanding the goods exist *in specie* at the intermediate port. And if the goods are in such a condition at the intermediate port, that they cannot be carried forward consistently with the health of the crew and the safety of the vessel, the loss is considered total." 2 Parsons' Maritime Law, p. 383. We refer the learned reader to the following cases: Maggrath v. Church, 1 Caines 196; Depyester v. Sun Mutual Ins. Co., 17 Barb. 306; Neilson v. Col. Ins. Co., 8 Caines 108; Saltus v. Ocean Ins. Co., 14 Johns 188; Bryan v. New York Ins. Co., 25 Wend. 617; Aranzamendi v. Louisiana Ins. Co., 2 La. 432; Williams v. Kennebec Mutual Ins. Co., 31 Maine 455; Robinson v. Commonwealth Ins. Co., 3 Sumner 220; Hugg v. Augusta Ins. and Banking Co., 7 Howard 595.

## ABANDONMENT OF FREIGHT

One of the grounds of abandoning freight is a total loss of the ship, by its becoming a wreck or being innavigable. An

indefinite detention of the ship, or one for so long a period as to break up the voyage, is also a total loss of freight.

But if, although the ship itself be wrecked or otherwise lost, the master can tranship and forward the goods by reasonable endeavors and at reasonable cost, we have seen that it is his duty to do so; and if he neglects this duty the underwriter is chargeable only in the same way and to the same extent as if the duty had been performed, and the loss will be partial or total, according to its amount when so adjusted. Mr. *Parsons* says—“The master has a right to send forward the goods if he can; and if he offers to do so, the shipper must either pay him full freight—in which case there is no loss—or let him send the goods forward, and on their arrival pay him freight. Though it has been held, that if the vessel is lost and the goods cannot be sent forward at an expense less than the original freight, there is a total loss of freight; yet, if the goods were sent on by the master, this would be on the original contract, and therefore, the ship-owner having earned his freight, would not be entitled to claim it from the insurer, for the latter does not stipulate that the adventure shall be profitable, but merely that he shall not be prevented by a peril of the sea from carrying on the cargo and delivering it in safety. And if the master acted in this matter with good faith and reasonable discretion, the shipper must pay the extra cost of sending the goods forward. And if he does not send them on, at least if it can be done at no greater expense than the original freight, it is difficult to see how the loss can be said to be total.” 2d *Parsons* 386.

If the ship and cargo are damaged by the perils against which freight is insured, but the ship can be repaired in reasonable time, and a proportion of cargo on which over half of the stipulated freight is to accrue, remains in such a condition that it may be forwarded in the same ship to the port of destination, it is not a total loss of freight for which the assured can abandon. *McGaw v. Ocean Ins. Co.*, 23 *Pick. R.* 405.

Where the ship is wrecked or damaged irreparably, or so much that it cannot be repaired in reasonable time to carry for-

ward the cargo, and the master unjustifiably neglects to procure another to carry it on, and earn freight, the loss on freight will be only the amount which must have been paid to such other ship. 15 Mass. R. 345.

The absolute loss of the cargo, as of the ship, is a total loss of freight, although the ship may be in a condition to continue the voyage. 18 John's R. 208.

Mr. Phillips says—"The ship-owner is responsible only for the transportation of the cargo, the freight will be due on its delivery at the port of destination, and in whatever degree goods may be diminished in value by decay or damage from perils of the sea, and though they may have become of no value on arrival at the port of destination, still, if they are delivered *in specie*, being articles of the same kind as those shipped, and not mere remains of its destruction or decay, freight is due; and accordingly, though the goods may be totally lost to all the purposes for which they can be available to the shipper, there is not a total loss of freight." 2d Phillips 1643.

In the principle thus clearly settled by Mr. Phillips, all approved writers concur; it may, however, be said that there is no obligation upon a ship-master to re-ship goods which are already of no value and will be worthless on delivery. This objection would be untenable; the master is the servant of the owners and bound to earn all the freight he lawfully can. If he neglects to re-ship damaged goods when the re-shipment is practicable, the loss arising from such neglect is not to be borne by underwriters on freight.

If barrels or boxes in which was oil, or sugar, or salt, arrive in good order, but without the contents, the shipper is liable for the freight if the loss was owing to an intrinsic defect in the goods, as where they are lost by decay, evaporation, or leakage, but the shipper is not liable where the contents are washed out by a peril of the sea. In this latter case, therefore, as the ship-owner loses his freight by a peril of the sea, it follows that the underwriters are liable therefor, although the barrel or box arrives in safety. DeWolf v. State Mut. F. & M. Ins. Co., 6 Duer 191.

The abandonment of the ship transfers to the underwriters all the remaining rights and interests of the assured; and among these the power of earning a subsequent freight. If, therefore, the ship is insured in one place, and the freight in another, and the ship be abandoned, the underwriters on the ship will take whatever subsequent freight the ship may earn. But the underwriters on freight will take the freight previously earned; because every abandonment refers, in point of time, to the time of the loss which justifies the abandonment. And in this country where there is an abandonment and constructive total loss and transfer, there is an apportionment of the freight. The part earned before the loss going to the underwriters on freight, and no more; while that earned afterwards goes to the owner of the ship, or to his transferees by abandonment. 2d Phillips 351; 2d Parsons 393; Coolidge v. Gloucester Ins. Co., 15 Mass. 341.

If the cargo is wholly lost, and the ship can take another for the same voyage or the remainder of it, the freight so earned is salvage on that originally agreed for. But this proposition is applicable only to the case of a prosecution of the same voyage as distinguished from undertaking a different one. Jordan v. Protection Ins. Co., 1 Story's R. 342.\*

*What is the form and manner of abandonment; and within what time must it be made?*

No especial form of abandonment is prescribed by law or usage. It is the spirit of the act rather than the letter that in this case is to be considered. Notice of abandonment, however, is usually given in writing, but even this does not seem to be absolutely necessary, all other things being valid. It is customary for the assured to write a letter to his underwriters giving them notice that he abandons the interest insured to them;

\* But it must in substance be positive and absolute, and impart an actual present relinquishment, and must truly state the reasons or grounds of abandoning. Price v. Ocean Ins. Co., 18 Pick, 98.

and he frequently gives them what information he possesses as to the cause and occasion of abandonment. The more distinct and direct the manner of giving notice the better; but sometimes an indirect communication, if it be proved afterwards that the underwriters understood it and acted on it, will be sufficient. But generally the notice should state substantially the grounds on which the abandonment is made; and the cause stated must be a peril within the policy.

It is of importance that the notice should be given to the underwriters in proper time; because it is only just that if I throw up my property and leave it on their hands to dispose of as they think proper, it should be done when there is yet an opportunity of their acting on my abandonment, and of taking measures to secure and dispose of the property which has in this manner become their own.

In *Pierce v. Ocean Ins. Co.*, 18 Pick. 93, Mr. Chief Justice Shaw said:—"The underwriters ought to be informed by the assured who alone know the fact, of the nature of the constructive total loss, upon which the claim is made, that they may judge whether they will accept the abandonment, and that they may forthwith take the necessary measures which such an acceptance would render necessary and proper. *And the assured cannot avail himself of any other ground, than that stated by him at the time of abandoning.* If the ground stated is insufficient, the underwriters will be justified in refusing to accept the abandonment, and if there be another ground sufficient in fact, but no notice of it communicated to the underwriters, it is ineffectual to found a claim for a total loss, as if no abandonment at all had been made."

*What is the rule with reference to acceptance of abandonment by the underwriters?*

It is not necessary to its validity and effect that it be accep-

ted by the underwriters; because the rights of the assured do not depend on the acknowledgment or assent of the underwriters. And because the acceptance is not necessary to give the assured his rights, there is no obligation on the underwriters either to accept, or to declare that they do not accept.

Abandonments are generally refused by the underwriters, because admission of the abandonment places them in a somewhat different position with the assured, and they generally wish to avoid any accession of responsibility, particularly as abandonments are frequently made when facts relating to the loss of the ship and goods are very imperfectly known.

I have already remarked that the master is not empowered to abandon to the underwriters—he is agent for both owners and underwriters—if the facts of the case justify an abandonment, and it is made in due season, then the master becomes agent for the underwriters, but otherwise, he is the agent for the owners. It is the master's duty, therefore, to go on and save the property to the best advantage, precisely as he would do if it were his own and uninsured; and the results must show for whom he has so acted.

#### *What is the effect of abandonment?*

It is the cession and giving up of all right, present and future, in the thing lost, and the transference of all property and rights to the underwriters, so far as the same belonged to the assured and to the extent of the interest covered by the policy.

By the general maritime law, not only of this country, but of all nations, the assured is bound, on the occurrence of any casualty, which authorizes an abandonment, to use his utmost endeavors to rescue from destruction, or to reclaim from capture the property insured, so as to lighten, as far as possible, the burden which is to fall on the underwriters. In doing so he

is considered to be the agent of the underwriters, and the exertions he makes in such capacity do not at all prejudice his right to insist on his abandonment.

This generally recognized right is expressly conferred on the assured in our policies, by a special clause to the following effect:—“*And in case of any loss or misfortune, it shall be lawful and necessary to and for the assured, their factors, servants and assigns, to sue, labor and travel for, in and about the defense, safeguard and recovery of the said goods and merchandise, or any part thereof, without prejudice to this insurance; nor shall the acts of the assured or insurers, in recovering, saving and preserving the property insured, in case of disaster, be considered a waiver or an acceptance of abandonment.*”

Immediately, therefore, that the emergency arises, and before notice of abandonment has been given, the master is bound to take every necessary measure for the defence, safeguard and recovery of the thing insured; in so doing he acts as the agent for both parties, or, more accurately speaking, as the agent of the party who may eventually turn out to be interested in the salvage, and, as such, derive benefit from his exertions.

If no abandonment be made, that party is, of course, the assured himself; it is as agent for the assured that the master will turn out to have acted, and it is to the assured himself he must look for making good all expenses *bona fide* incurred by him in his endeavors to save the property insured.

If, however, an abandonment be made, which is either accepted, or ultimately proves effectual, the effect of such abandonment, is, as we have seen, to constitute the underwriter owner of the property, from the moment of the casualty, and, therefore, to make the master, by operation of law, the agent of the underwriters in all that he has done *bona fide* for the recovery of the property from that time.

In the *Boston* policies there is a provision, that the assured shall not have a right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment, as of a *Partial Loss*, shall exceed half the value of the vessel insured.

It was accordingly held by C. J. SHAW, in the case of *Greely and Others v. Tremont Ins. Co.*, 9 Cushing, 420, that "a general average loss is not to be added to the cost of repair, in order to show that such costs would exceed one half of the value of the vessel, so as to constitute a constructive total loss. The right to abandon for a constructive total loss is plainly founded on the principle that, where the risk and expense of restoring the vessel are great, and disproportionate to the expected benefit and objects to be obtained by a repair of the vessel, the assured may, by notice of abandonment and surrender of the vessel to the underwriters, claim at once a total loss, according to his contract. The property is regarded as substantially gone from the power and control of the owner, to all useful and beneficial purposes.

"In estimating this expense, to determine whether the assured has thus a right to abandon and demand a total loss, the Court are of opinion, as well from the principle on which the right is founded as from the course of judicial decisions in this Commonwealth (Mass.), that a General Average loss is not to be added to the cost of repairs." See also *Orrok v. Commonwealth Ins. Co.*, 21 Pickering, 456; *Hall v. Ocean Ins. Co.*, 21 Pick. 472; *Reynolds v. Ocean Ins. Co.*, 22 Pick., 181; *Seawall v. U. S. Ins. Co.*, 11 Pick., 90; *Ellicott et al. v. Alliance Ins. Co.*, 14 Gray's R., 318.

C. J. SHAW added, "It has been supposed that the case of *Seawall v. The United States Ins. Co.*, 11 Pick, 90, is an authority for a contrary rule. But, when understood, we think it is not so."

Imminent danger of a total loss is no ground for an abandonment. Thus if a ship, being damaged, is abandoned on her way to a port to repair, the abandonment will be void, if the vessel arrives and is repaired for less than half her value. *Hall v. Franklin Ins. Co.*, 9 Pick., 566.

If the vessel cannot be repaired for one half her value at the place of the disaster, when repaired an abandonment is justifiable. *Patapsco Ins. Co. v. Southgate*, 5 Peters. S. C. Reps., 604.

There is no particular form or mode of abandonment. If the assured yields up his right and interest in the subject, it is sufficient,

and this may be done by his sending to the underwriter a protest made by the master, containing a clause of abandonment, provided he shows the underwriter his intent to rectify the act of the master. *Patapsco Ins. Co. v. Southgate*, 5 Peters. S. C. Reps., 604.

Before an abandonment is accepted, it may be waived by the insured. Whether he has waived is, generally, a question of intention to be passed on by the jury; and it would not be safe to declare that any act of ownership by the assured must necessarily be construed into a relinquishment of an abandonment. *Columbian Ins. Co. v. Ashby*, 4 Peters. S. C. Reps., 139.

An offer of Abandonment having been made in a case where it was justifiable, but neither accepted nor refused, an offer by one professing to act as the agent of the underwriters, to pay the expense of getting the vessel off and putting her in a condition to prosecute her voyage, did not put an end to the abandonment. *Columbian Ins. Co. v. Ashby*, 4 Peters. S. C. Reps., 138.

If an abandonment, when made, is good, the rights of the parties are fixed. If not then good, subsequent events cannot validate it. *Bradlie v. Maryland Ins. Co.*, 12 Peters. S. C. Reps., 378.

If the cost of the repairs, when made, falls short of one-half the value of the vessel, this does not, in all cases show there was no right of abandonment; for if, when made, the facts presented a case of extreme hazard, and of probable expense exceeding half the value, the abandonment is justified. *Bradlie v. Maryland Ins. Co.*, 12 Peters. S. C. Reps., 378.

The value at the place of repairs is the standard; the valuation in the policy, or the value at the home port, or in the general market constitutes no ingredient in ascertaining whether the injury is more than half the value. *Bradlie v. Maryland Ins. Co.*, 12 Peters. S. C. Reps., 378.

A retardation of the voyage to repair damages, or because the vessel has been arrested to answer a claim for salvage, does not give a right to abandon, and it makes no difference that the policy is on time. *Bradlie v. Maryland Ins. Co.*, 12 Peters. S. C. Reps., 378.

The right to abandon depends on the actual state of the loss at the time of the abandonment, not upon the information concerning the loss then in the possession of the assured. *Marshall v. Delaware Ins. Co.*, 4 Cranch's S. C. R., 202.

The law fixes no precise time, after notice of the loss, within which an abandonment must be made, but it requires it to be made within a reasonable time. *Marine Ins. Co., of Alexandria, v. Tucker*, 3 Cranch's S. C. Reps., 357.

The right to abandon may be left in suspense by mutual consent. *Livingston v. Maryland Ins. Co.*, 6 Cranch, S. C., Reps., 274.

Under a general policy of insurance, the ship-owner can have no right to abandon which is inconsistent with his general duty to the owner of the cargo. If he has a right to abandon the ship when it is injured to a certain extent, the shipper cannot require him to repair for the purpose of sending on the cargo. He can only be required to send it on if another vessel can be procured. A technical total loss of vessel involves a loss of freight. By the abandonment of the vessel, she is no longer able to earn freight for the assured. *American Ins. Co. v. Center*, 4 Wendell's Reps., 53.

The owner of goods insured cannot abandon on account of the vessel's being disabled in the course of her voyage, if upon the whole it is reasonable, taking into view the nature of the voyage, and the time, expense and risk of sending on the cargo, that the master should procure another vessel for that purpose, although he should not be able to do it at the port of distress, or one contiguous, and although it should be necessary to make use of land-carriage to re-ship the goods. *Bryant v. Commonwealth Ins. Co.*, 6 Pickering's R., 131.

A ship laden with tobacco and cotton on freight, and bound from New Orleans to Havre, was injured by the perils of the seas and a part of the cargo damaged, and she returned to New Orleans for repairs; there was reason to believe that she could be refitted for sea in three or four months. The cargo could not be sent on in another vessel at a lower rate of freight, and the master delivered it up to the shipper. Held, that the insurers on freight were respon-

sible for the loss of the freight on the portion of the cargo which was wholly destroyed, but they were not responsible in respect to the sound portion, because the master was not bound to give it up without receiving full freight on it, but might have retained it, to be transported in his own vessel, nor in respect to a portion of the cotton which was sold by the master at New Orleans, in consequence of its being wet by sea-water, although cotton in that condition is liable to spontaneous ignition: *McGaw v. Ocean Ins. Co.*, 28 Pick., 405.

In *Hugg v. Augusta Ins. and Banking Co.*, 7 Howard's S. C. Rep's 610; Nelson, J. said:—"We direct it to be certified to the circuit court, if the jury find that, from the condition of that portion of the cargo sold at Nassau, it was for the interest of the insured and insurers of the cargo that it should have been sold, and not transported to Matanzas, still, the plaintiffs are not entitled to recover as for a total loss of freight, provided their own vessel could have been repaired in a reasonable time, and at a reasonable expense, so as to perform the voyage, or they could have procured another at Nassau, the port of distress, and have trans-shipped the portion sold in specie to the port of destination."

#### *Risk of Proceeds.*

The salvage of a ship or of goods, in respect of which the Underwriters have paid a total loss or have accepted an abandonment passes to them as a matter of right. By paying the value to the owner they have necessarily purchased all property in any portion that remains of the interest they insured. The ownership is changed, and the Underwriters now stand in the place of the original owners. The agents acting in the matter to realise the proceeds of the wreck are *their* agents. As the Underwriters have purchased with the wreck all possibilities of the wreck producing more than was anticipated, so the risk of solvency or honesty of the Agent, Auctioneer, &c., is transferred to them also. The proper mode of proceeding in case of a loss is, for the person in charge of the proceeds to account directly to the Underwriters, and for the Underwriters to pay the loss in full to the assured; but in the course of actual business it is common, and it is generally more convenient, for the assured to receive the proceeds in part payment of his loss, and to come to the Underwriters for the balance of it. The non-solvency of the parties at a distance is nevertheless at the Underwriters' risk if the remittance be made in proper time and in the usual manner; but should the owner either by negligence, or by interference for some particular object of his own, cause an unnecessary delay in receiving the proceeds, and in the meantime the holder of those proceeds should fail,—or should he

take upon himself to order a remittance by some unusual or circuitous course, and the proceeds should in that transit be lost, the Underwriters are not to be sufferers through his *laches* or be made to be speculators in the particular design entertained by him when he ordered home the proceeds in that circuitous or unusual course; and the owner must be taken to have received the proceeds, although they may never have actually come into his hands. *Note to 2d Ed.*

## CHAPTER XV.

### BOTTOMRY AND RESPONDENTIA.

A Bottomry bond is a contract for a loan of money on the bottom of the ship at an extraordinary interest, upon maritime risks to be borne by the lender. In its proper form it takes effect only at the termination of the voyage and at the place specified in the document; and, usually, three or more days' grace is granted for the captain and owner to satisfy the holder of the bond, after the ship's arrival at her destination. One of the conditions of such a bond is, that in case the vessel, by losses and accidents of the sea, never reaches the place to which she is bound, the bond is cancelled. This risk is frequently provided against by the lender of the money insuring the bond.

Sometimes, and very frequently, the freight and the cargo are included in the bond, and then it is called a *Respondentia* bond, or bond of Bottomry and Respondentia. In this case the holder's lien is first on the ship itself, next on the freight, and lastly on the cargo.

The essential pre-requisites to the validity of a bottomry bond given by the master are, 1st—That it is given in the absence of the ship-owner, and at such a distance from his residence, and under such circumstances, as that he cannot be consulted in regard to it without injurious delay. *La Ysabel*, 1 Dod., 273; *The Trident* 1 W. Rob., 29; *Patten & Dickson v.*

The Randolph, Gilpin, 457. 2d—That the money, repairs or supplies for which the bond is given are necessary—meaning, thereby, reasonably fit and proper under the actual circumstances, or, at least, shall appear to the lender upon due enquiry to be necessary—to enable the ship to complete the voyage. The Fortitude, 3 Sumner's Rep., 228; The Prince of Saxe Coburg, 3 Moore, P. C. R. 1; The Gratitude, 3 C. Rob., 240; The Aurora, 1 Wheat, 96. 3d—That the money, repairs or supplies for which the bond is given, is advanced, or are made or furnished, on the credit of the ship, and, that it does not appear to the lender, on due and reasonable inquiry, that the money or repairs or supplies can be had on personal credit. Heathorn v. Darling, 1 Moore, P. C. R. 5; The Saxe Coburg, The Randolph Supra. If the advances or repairs were necessary, it belongs to the owner to show that they could be procured on personal credit. The Virgin, 8 Peters, 538. 4th—That the principal and interest put by the bond at the risk of the voyage, *i. e.*, that the payment of the money shall be made by the bond to depend upon the safe arrival of the ship at the end of the voyage upon which the money is loaned. The Emancipation, 1 W. Rob., 125; The Atlas, 2 Hogg, 65; Stainbank v. Shepard, 20 Eng. L & Eq., 547.

A bottomry bond given by the master after the advances had all been made, is valid, provided that they were made with an understanding that such a bond would be given. The Virgin, 8 Peters, 538. But if the advance was originally made on personal credit, the bond is invalid. The Trident, 1 W. Rob., 34; The Augusta, 1 Dod., 283; The Hunter, Ware, 249.

In a suit on a bottomry bond given by the master, the libellant must prove by evidence, other than the bond itself, that the money was lent, or the repairs made, and materials furnished, to the amount claimed; and that they were necessary to enable the vessel to perform the voyage, or for her safety. He must also exhibit an account of the items advanced, with sufficient proof to support them, to enable the court to judge of their necessity. The brig Bridgewater, 1 Olcott R. 35.

Bills of exchange may be drawn on account of the supply,

and a bottomry bond given at the same time as a collateral security, in this sense, that if the bills of exchange are honored, (that is, accepted and paid, if they require acceptance, or paid if they do not, as the case may be,) the bottomry bond is discharged, and though the ship arrive, the maritime interest is not payable; if dishonored, the amount is payable on arrival, by means of the remedy against the ship, and in that case with maritime interest. *Stainbank v. Shepard*, 20 Eng., L. & Eq. 547; *The St. Catherine*, 3 Hagg, 250; *The Atlas*, id, 43; *The Emancipation*, 1 W. Rob., 124; *The Hunter*, Ware, 249.

The borrower on a bottomry bond is discharged of the payment only in the case of an actual loss occasioned by the perils the lender assumes; and the insurer on a bottomry interest is liable only in the case of an actual loss occasioned by the same perils. *Joyce v. Williamson*, 3 Doug., 164; *Thompson v. The Royal Ex. Ass. Co.*, 1 Maule & Selwyn, 30; *Pope v. Nickerson*, 3 Story, 465; 2 Arnoüld, § 392. In case of a deviation from the voyage or a voluntary abandonment of it, after it had been commenced, the bond becomes absolute and payable. *The Dante*, 2 W. Rob., 427; *Pope v. Nickerson*, supra.

A bottomry bond is sometimes taken for a larger amount, but that furnishes no ground of objection to the bond, except for the surplus; for a bottomry bond may be good in part, and bad in part, and it will be upheld by courts of admiralty as a lien to the extent to which it is valid; as such courts, in the exercise of their jurisdiction, are not governed by the strict rules of the common law, but act upon enlarged principles of equity. There are many authorities to this effect, but it is only necessary to cite, *The Virgin*, 8 Peters, U. S. Sup. Ct. Reps., 208; *The Augusta*, 1 Dodson, 283; *The Tartar and The Nelson*, 1 Hag. Adm. R. 169, 176.

A bottomry bond does not make the owners personally debtors. In the case of *The Nelson*, 1 Hag. Adm. R. 176, Lord *Stowell* remarked, that the form of bottomry bond is different in different countries, and so is their authority. In some countries they bind the owners; in others not; and where they do not, even

though the terms of the bond should affect to bind the owners, that part would be insignificant, but it would not at all touch upon the efficiency of those parts which have an acknowledged operation. In England and America the established doctrine is that the owners are not personally bound, except to the extent of the fund pledged which has come into their hands. This ruling was sustained by *Story*, C. J. in the case of the *Virgin*, 8 Peters, 208, who remarked, "to this extent indeed, they may correctly be said to be personally bound; for they cannot subtract the fund, and refuse to apply it to discharge the debt. But in that case the proceeding against them is rather in the character of possessors of the thing pledged, than strictly as owners." See also, *The Nelson*, 1 Hag. Adm. R. 169, 176.

Seamen have a prior lien on the ship for their wages, but the owners are personally liable for such wages; and if the bottomry holder is compelled to discharge that lien, he has a resulting right to compensation over against the owners, in the same manner as he would have if they had previously mortgaged the ship. *The Virgin*, 8 Peters, 208.

The lender should exercise care in making advances on bottomry. He should not encourage a shipmaster in an extravagant expenditure. If he connives in any way at any fraud of the master, this avoids the bond in toto, nor has he any lien on the ship for the amount actually advanced; but the fraud of the master or borrower does not have this effect if the lender were neither participant in, nor conusant of it. He should ascertain by inquiry that the loan demanded is really wanted for the necessities of the ship; and advertisements for bottomry must state the object for which the money is required. After this preliminary inquiry, the lender is not bound to see to the application of the money—how it is actually expended. *The ship Fortitude*, 3 Sumner, 228, 249; *Carrington v. Pratt*, 18 Howard, 63; *Conard v. Atlantic Ins. Co.*, 1 Peters, 386, 437.

If the owner resists payment of the bond on the ground of the fraud of the lender, or because the master had, within his reach, either the funds or a sufficient personal credit of the

owner, the *onus* is upon him to prove this; and there is even a presumption in favor of the lender, that he did make the proper inquiries and was reasonably satisfied of the necessity. The ship *Fortitude*, 8 Sumner, 228; *The Virgin*, 8 Peters, 538.

If the lender be in debt to the owner of the ship, he is bound to apply the amount due to the necessity of the ship, and cannot, by advancing it, create an independent claim against the owner, and bind the ship to this with maritime interest. *Rucher v. Conyngham*, 2 Pet. Adm. 295; *The Aurora*, 1 Wheat. 96; *Hurry v. the ship John and Alice*, 1 Wash., C. C., 293.

When two or more bonds are given on the same voyage, the last takes precedence, and so on in retrograde order. The last one being satisfied, the penultimate takes what is left, etc. There is one exception, however. If after a bond has been given, the captain obtains a credit from his owner, and then gives a subsequent bond, the first, in this case, takes priority.

It has been doubted whether a bottomry bond may be given to a consignee of the ship, or to any party holding to the ship-owner, the relation of agent to principal. But it has been decided by authority, that such a bond is valid. If the consignee however, have funds in his hands belonging or due to the owners of the vessel, it is well settled that he cannot lend his own money on bottomry. *Hurry v. The ship John & Alice*, 1 Wash. C. C., 293; *The ship Lavinia v. Barclay*, 1 Wash., C. C., 49; *Ross v. The ship Active*, 2 Wash., C. C., 226; *Reade v. Commercial Ins. Co.*, 2 Johns, 852.

A bottomry bond is preferred to any other lien whatever, excepting only the lien of the seamen for wages, and the lien of material men for repairs or supplies indispensable to her safety. The reason of this rule is, that a bottomry bond saves the ship; for it is to be presumed that it was made from a strict necessity; and if it had not been made, the other liens on it would have been worthless. The reason of the exception is, that the bottomry bond itself would never have brought the ship within reach of any person having an interest or a lien upon her, had she not been navigated home by the seamen. *The Mary*, 1

Paine, C. C., 571; Blaine v. ship Charles Carter, 4 Cranch, 828; The Virgin, 8 Peters, 538. For the reason that a bottomry bond is supposed to have saved the ship, it is construed very liberally by all courts, and if possible the intention of the parties is carried into effect. Pope v. Nickerson, 3 Story, 865.

Bottomry being at best an expensive means of raising money, a shipmaster is bound to circumscribe the sum borrowed as much as possible. He should therefore apply the sale of any condemned stores of the ship, and the proceeds of any damaged goods, part of the cargo which surveyors have recommended to be sold on the spot, in diminution of the amount of his disbursements. And sometimes it is impossible to raise money at all on bottomry, and sometimes the rate demanded is so high as to appear ruinous, and other means for obtaining funds are resorted to. A captain under such circumstances may proceed to sell a portion of the cargo; but he has no right to sell an entire cargo at an intermediate port to raise funds to repair his vessel, for if the whole is sold, this is no benefit to the cargo or to the ship per. He has the same right, in fact, to sacrifice a part that the remainder of the interests may reach their destination, as he has to throw a portion into the sea to procure the safety of the rest. In regard to the exercise of this power, it can only be said that there must be an actual and urgent necessity; and as to the manner of its exercise, much must be left to the discretion of the master. If he act in good faith, and under a sufficient necessity, for the best interests of all concerned, and with reasonable discretion, his acts will be valid. But it is not enough that he act *bona fide* if no actual necessity existed. Pope v. Nickerson, 3 Story, 465, 491; The Packet, 3 Mason, 255; United Ins. Co. v. Scott, 1 Johns, 106; Fontaine v. Col. Ins. Co., 9 Johns, 29; Ross v. Ship Active, 2 Wash. C. C., 226.

A bottomry bond in admiralty is generally regarded as a negotiable instrument or interest, which being transferred in good faith and for consideration, may be put in force by the holder in his own name.

In making up the decree, the sum lent, together with the

marine interest up to the time when the bond is payable, constitutes the principal, and legal interest is to be added to this from that time to the time of the decree. The ship Packet, 3 Mason, 255, 267; Furniss v. The brig Magoun, Olcott, Adm. 55 66; The ship Panama, id. 342, 352. In England, it would seem that the practice is to allow interest only on the bond, and not on the bond and interest. *Marshall* on Ins. b. 2, ch. 4, p. 752. Mr. Arnould, however, is of opinion that the law as laid down by Mr. Justice Story in the case above, is now the law of England, 2 Arnould, 1340. No authority is cited for this, and the practice seems to be the other way.

As to the liability of the several *Underwriters* upon ship, cargo and freight, it will be more easily shewn, and more readily understood, by stating a case which occurred in actual practice. Incidentally the case also involves a consideration of the rights and liabilities of the owners of the ship, and of the cargo, as between themselves :—

*The ship —— sailed from New York, bound to San Francisco. Put into Rio for repairs. Sold about 1,000 bbls. flour to pay expenses, and gave bottomry bond on vessel, freight and cargo. The amount, including 70 per cent. premium, about \$8,000. The bond was paid by the Underwriters in New York, and assigned to them, 40 per cent. of premium having been deducted. After making repairs, she proceeded on her voyage, and meeting with heavy gales, was dismantled and returned to Rio. A second bottomry bond was given, the premium 75 per cent., amount including same about \$50,000. At Valparaiso a third bottomry bond was given, premium 20 per cent. Upon arrival at San Francisco, the vessel and cargo were sold to pay bonds, and about \$52,000 realized from proceeds.*

The repairs at Rio de Janeiro first referred to, were either such as constituted a partial loss, chargeable against the vessel alone, or such as were properly to be made good by a contribution from the ship, freight and cargo.

Assuming they were made by consequence of sea perils to the ship, then, it was a case merely of partial loss on the vessel, one-third of the expenses thereof being chargeable to the ship-owner, and two-thirds against the underwriters on the vessel. The loss having been partial only, the underwriters on the *ship* have nothing to do with the bottomry bond executed by the master. It was no part of their obligation to provide funds in Rio to pay a partial loss; their contract was simply to pay in New York so much of the costs of repairs as might be properly chargeable against them, including their proportion of the expense of raising the funds, at the expiration of thirty days, after reasonable proof of the propriety of the claim. The bottomry bond is to be laid out of view as being a matter which in no wise affects the underwriters.

The insurers of the *cargo* are not liable for any part of the expenses of repairs to the ship, assuming them to be particular, and not general average expenses. It also follows that they are not liable by reason of the bottomry bond, although it includes the cargo within its operation.

The underwriters on *freight* are not liable for any part of the repairs to the ship. They are strangers to the bottomry bond, and are not affected by it, although the instrument may have hypothecated the freight money to enable the master to raise funds.

The owners of the ship were themselves bound to provide funds to pay the bottomry bond, and had no right to call upon the underwriters, or upon the owners of the cargo to contribute any portion of the amount, unless it was a case of general average, and then only for the sums properly chargeable against the respective shipments or invoices, or their owners.

Supposing the repairs to the ship, made at Rio upon the first occasion, were to make good, damage voluntarily sustained for the common benefit, and constituting the subject of a General Average contribution. The underwriters have nothing to do with the Bottomry Bond. Their liability is simply to reim-

burse the assurer the sums that they have respectively been compelled to contribute, or, in other words, the underwriters on ship, freight and cargo, respectively, are bound to indemnify those whom they have insured by paying the share or portion, including the premium for raising the funds that have been assessed against them or their several interests, to be adjusted according to the valuation in the policy.

As to the 1,000 bbls. of flour sold at Rio, to pay part of the expenses of repairs (assuming them to be Particular, and not General Average repairs), the owner of them has no claim against the underwriters on cargo, who are not liable, excepting for damage or loss to it by some of the risks enumerated in the policy. A loss by reason of a forced sale of the cargo by the master, to pay for the repairs of his vessel, is not a risk covered by the insurer on cargo, nor has the owner of the cargo any claim against the underwriter on the vessel, because there is no contract against him. His sole remedy is against the ship and owners, and to them alone he can legally resort. The sale of this part of the cargo, and the appropriation by the master, of the proceeds to the use of the ship, to defray expenses which the shipowner was alone bound and liable to pay, was in the nature of a forced loan from the proprietor of the cargo, and, as in the case of any other loan, left the borrower responsible to the lender, or person whose property he had taken and used.

With these 1,000 bbls. of Flour, therefore, the underwriter on ship or on cargo had no concern. If the repairs were General Average charges, the taking of the flour by the master, and the application by him of the proceeds for the common benefit, would have been a forced loan on account of the owners of the vessel, freight and cargo, for which each subject would be bound to contribute their respective proportions, in like manner as if the flour had been jettisoned for the sake of the whole, and the underwriter on their respective interests would be bound to reimburse their respective dealers, the amount contributed by each subject to an adjustment.

The underwriters, who now hold the first Bottomry Bond by assignment, have the same right as the obligees or lenders on the Bottomry, they can look to the parties to whom, or for whose use, the loan was made, according to the terms of the instrument. The underwriters can have but little inducement to purchase a Bottomry Bond, for they had nothing to do with it, and if the ship and cargo had been sold, under and by virtue of it, their liability would not have been increased or diminished, or in any way altered.

The repairs made at Rio upon the *second* occasion, were of injuries to the ship occasioned by a stress of weather. These expenses were Particular Average, and constitute a claim for Partial Loss, to the extent of two-thirds of the cost of repairs, including a just proportion of the cost of raising funds.

The loss was Partial, and not Total, even if the cost of the repairs, including that of raising funds, after deducting one-third, had exceeded a moiety of the value of the ship, as fixed in the policy, because, in this case, *no abandonment or notice of abandonment had been made, and because, after the master had decided to repair, and actually did repair, and prosecute the voyage, the loss was partial only*, and to be settled upon the principle of a partial loss, no matter what the cost of repairs actually proved to be. Hence one-third of the whole sum is to be borne by the owners of the ship, and the underwriters are responsible for the other two-thirds, to be adjusted as a Particular Average.

If any portion of the expenses incurred upon the *second* occasion was to be charged as General Average, then the underwriters upon vessel, freight, and cargo, respectively, were liable to reimburse their respective dealers, the sums properly charged against them, to be adjusted according to the valuations of the respective subjects in the policies.

The same observations apply to the repairs in Valparaiso, that were made in reference to the expenditures at Rio. The loss (assuming it to be Partial) is to be adjusted as a Particular Average upon the ship, except such parts of the expenses as are chargeable in General Average.

The sale of the vessel and cargo in San Francisco, under and by virtue of the Bottomry Bond, or in order to satisfy them, did not make or create a claim for Total loss against the underwriters, either on ship, freight or cargo.

1st. *As to the ship.* As has been stated, the damages repaired in Rio and in Valparaiso did not constitute a total loss—therefore, the expenses upon each of these occasions were to be settled upon the principle of a particular or general average, as the case might be. The giving of a Bottomry Bond by the master did not alter the nature of the loss, or make that Total which was, in fact, only Partial. The underwriters were not bound to provide funds to pay these Bonds, nor did they assume, or incur any other responsibility than simply to pay the loss in New York, at the expiration of thirty days after the assured had made proof of the nature and extent of the loss. It was the duty of the ship-owners to have satisfied the Bonds, one-third of the amount of which (if they were not General Average) his underwriter had, in any event, no concern with, and the residue of which was for money borrowed by his agent the master, in order to defray charges which were a Partial Loss only. The vessel and cargo were sold at the port of destination, merely because the owners of the ship did not provide funds to satisfy them.

A loss in fact Partial, could not be converted into a Total Loss by a sale of the vessel, either by the voluntary act of the master, or by a compulsory proceeding by the holders of the Bottomries. The latter could not affect the rights of the underwriters, by any act or proceeding in San Francisco. The underwriters were clearly liable only for a Partial, and not for a Total Loss, together with reimbursements of General Average (if any) assessed upon her, to be adjusted according to the value in the policy.

2d. *As to the Freight* The ship arrived at the port of destination, and delivered her cargo, except that portion which was sold by her master in Rio, and which was not lost by any peril insured against. The freight was earned, and would have

been collected by the master, but for the sale of the cargo under the Bottomries. If it were lost, and not collected by him, it was not by reason of any peril insured against, but exclusively because the owners of the ship did not provide funds necessary to relieve her from the liens created to defray the cost of a Partial Loss, together, probably, with some expenses of a General Average nature. The insurers on freight are liable for any Partial losses created by the occurrences of any of the accidents insured against, and to reimburse General Average to which it was subjected.

3rd. *As to Cargo.* It arrived at the port of destination in safety, except that part which was taken by the master at Rio, and appropriated to the use of the vessel. There was in fact no Total Loss of the cargo, by any risk or peril insured by the underwriters on it, and they are not responsible for anything except a Partial Loss, in case any of it was damaged by the perils insured against, and to indemnify the assured for any General Average with which he has a right to charge them. The sale of the cargo by the holders of the Bottomry Bond, or by the master, in order to satisfy them, did not convert a Partial Loss into a Total Loss, or create a Total Loss for which the insurers on it can be made liable. For form of Bottomry Bond see following page.

## BOTTOMRY BOND.

*Principal,*  
*Maritime Interest,*

8  
\_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS, That I, ...., now Master and Commander of the ..... called the ....., of the burden of ....., now lying at the Port of ....., and bound for ....., am held and firmly bound unto ....., of the city of ....., in the penal sum of ....., lawful money of the United States of America, to be paid to the said ....., or to .... certain attorney or attorneys, executors, administrators or assigns, for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and every one of them, and also the said vessel, her owners, or whoever may hereafter become her owner or owners, firmly by these presents. *Sealed with my Seal at the City of .....* this ..... day of ....., one thousand eight hundred and fifty .....

.....  
.....  
.....  
.....  
.....

*Whereas* the said ..... did recently on a voyage from ..... to .....

.....  
it was deemed prudent by the above bounden ..... to put into this port in order that she should undergo certain repairs and receive supplies to render her sea-worthy, and in a fit condition to pursue her voyage. *And whereas* the said Master had not funds for that purpose, nor could he upon his own personal credit, or that of the owners of the said vessel, raise and supply the requisite funds therefor. *And whereas* in the emergency above stated, he advertised for a loan on Bottomry, and received from ..... the most liberal propositions for the supply of the funds indispensable to the said repairs, and the other expenses of the said ....., in the said Port of ....., who agreed to make the said advances and take a Bottomry Bond on the said vessel,.....  
.....  
..... at the

rate or premium of ..... per cent. for the voyage from the Port of ..... to ..... *And whereas* the said vessel being now ready for sea, to leave this Port as soon as wind and weather serve after the execution of these presents; the said ..... ha.. accordingly made the said advances for the purposes aforesaid, amounting to the sum of ..... which sum is to run at respondentia on the

.....  
at the Bottomry premium of ..... per cent., amounting to the further sum of ..... the whole of which, exclusive of the said Bottomry premium, has been necessarily expended in and about the said repairs, and for the use and benefit of the said vessel, to enable her to prosecute her voyage. *And* for the better security of the said sum and premium, the said Master doth, by these presents, hypothecate and assign over to the said ....., heirs, executors, administrators and assigns, the said .....

.....  
*And* it is hereby declared that the said .....  
.....  
is thus hypothecated and assigned over for the security of the money so borrowed and taken up as aforesaid, and shall be consigned to the assignee of this Bond, to be by .... held until the said sum of ....., together with the Bottomry premium of ....., amounting to gether to the sum of ....., be justly, duly and fully paid, according to the condition following, and shall be delivered for no other use or purpose whatever.

*Now the Condition* of this obligation is such, that if the above boun-  
den ..... shall well and truly pay, or cause to be paid, unto the  
said ..... certain attorney, executors, administrators and assigns,  
the just and full sum of ....., being the sum borrowed,  
and also the premium aforesaid, at or before the expiration of five days  
after the arrival of the said vessel at her anchorage in the Port of  
....., or in case of loss of the said ....., such an average  
as shall by custom become due on the salvage, then this obligation and  
the said hypothecation to be void and of no effect.

*If, however,* the said amount, together with the premium, is not paid  
within five days, as above specified, then this obligation and hypotheca-  
tion is to remain in full force and virtue, and an additional premium of  
ten per cent. on the above amount advanced is to be charged and paid

by the above bounden, and the assignee hereof is hereby empowered and authorized to dispose of the said vessel, .....  
..... at Public Auction, or otherwise, to liquidate and defray the amount of this obligation, and also all charges, costs and interest, ruling at the Port at which this obligation is made payable, and refund to the owners, or their representatives, any surplus.

Under no circumstances shall any subsequent indebtedness of the said vessel or her owners in any way affect or cancel the efficiency of this Bond.

Having signed and executed three Bonds all of the same tenor and date, one of which being accomplished, the others to be void and of no effect.

*Witness my hand and seal* at ....., the day and year above written.

Sealed and delivered in the presence of .....

# GENERAL AVERAGE

## In England,

### GENERAL AVERAGE.

| General Principles.               | English Practice.   |
|-----------------------------------|---|
| [1] "Common Interest."            | <p>There must be a "Common Interest" between all property affected by a general average.<br/><i>Baily.</i></p> <p>A loss arising out of extraordinary sacrifices made, or extraordinary expenses incurred for the joint benefit of ship and cargo.<br/><i>Arnould, 878.</i></p> |
| [2] Voluntary and deliberate act. | <p>The leading characteristic of a general (as distinct from a particular) average loss is, that it is the intentional act of man, not the inevitable result of the perils insured against.<br/><i>Arnould, 881.</i></p>  |

\* For practice in Spain, see *Hand Book*, page 97.

## PRACTICE

### America and France.

#### GENERAL PRINCIPLES.

| American.  | French.  |
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| Expenses incurred, sacrifices made, or damage voluntarily sustained for the common benefit of ship, freight, and cargo, constitute general average.<br><i>Phillips, II. 64.</i>  | General Average, in general, comprises damages and expenses voluntarily incurred for the common welfare and safety of ship and cargo, from the loading and departure to the return and discharge of the same.<br><i>Rogron, 400.</i> |
| But press of sail put on the vessel to enable her to weather a lee shore, and when it is known that the exposure will entail loss, and although voluntarily done for the general good, does not constitute General Average. Neither does the sacrifice of sails cut up and destroyed to fit the places of other sails previously lost, for they have only been applied to the purposes originally intended when put on board, i. e., the safe navigation of the ship. The same rule applies to all other materials, but when sacrificed or used for other purposes constitute good claim for Average Contribution. |  |
| A loss, though it be extraordinary and not a part of the expense and inconvenience of navigating the vessel, if it take place without the agency of the master, crew, or other persons acting for the general benefit, is not a  | The act must be voluntary and deliberate; notwithstanding in some cases of an immediate danger, the general average is accepted, though the loss or sacrifice has been made without deliberation. <i>Practice of Bordeaux.</i>       |

| General Principles.  | English Practice.   |
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|  | <p>The sacrifice must be made deliberately, voluntarily, and with the object of saving or protecting the remainder of the property at risk.</p> <p><i>Hopkins, 26.</i></p>  |
| [3] Amount of danger requisite to justify a general average act. | <p>There must be a moral certainty of total loss when the act is performed.</p> <p><i>Baily.</i></p>  |
|  | <p>The sacrifice must have been made under the urgent pressure of some real and immediately impending danger, and must have been resorted to as the sole means of escaping destruction.</p> <p><i>Arnould, 884.</i></p> |
| [4] The act must be deliberate and judicious.                    | <p>The act must be judicious.</p> <p><i>Baily.</i></p> <p>Must be the result of due deliberation.</p> <p><i>Arnould, 887.</i></p> <p><i>Hopkins, 26.</i></p>  |

| <u>American.</u>   | <u>French.</u>                       |
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| <p>subject of general contribution, which must be where an expense is incurred, or sacrifice made with deliberate intent.<br/> <i>2d Phillips</i>, 65.</p>   |                                      |
| <p>In the case of ship "Brutus," Same as English.<br/> <i>Barnard v. Adams</i>, 10 Howard, 270, 303, Mr. Justice <i>Grier</i> said: "In order to constitute a case of general average, three things must concur. 1st. A common danger; a danger in which ship, cargo, and crew all participate; a danger imminent and apparently inevitable, except by voluntarily incurring the loss of a portion of the whole to save the remainder. 2d. There must be a voluntary jettison, or casting away, of some portion of the joint concern for the purpose of avoiding this imminent peril, or, in other words, a transfer of peril from the whole to a particular portion of the whole. 3d. This attempt to avoid the imminent common peril must be successful."</p> <p>See also, <i>Sturgis v. Cary</i>, 2 <i>Curtis, C. C.</i>, 59, 66.</p> <p>And see <i>Query 5, "Jettison and its Consequences."</i></p> | <i>Bordeaux.</i>                     |
| <p>It must be necessary, or justified by reasonable cause, for, if it be not, it is only a wanton destruction of property by those who are in charge of it, and they or their employers must respond to the full value of what is lost.<br/> <i>1 Parsons</i>, 288.</p>  | Same as English.<br><i>Bordeaux.</i> |

| General Principles.                           | English Practice.   |
|---|---|
| [5] Whether a successful result be necessary. | An act may be a general average act when it did not and really could not have had a beneficial effect.<br><i>Baily.</i>   |
|   | Mr. Arnould, vol. 2, page 885, says: "It has been laid down that not only must the sacrifice be made with a view to the safety of the whole adventure, but that it must accomplish that object, at least for a time, otherwise it can give no claim to a general average contribution. It is quite clear, indeed, that if both ship and cargo entirely perish in spite of the sacrifices, so that nothing of either comes to the hands of their respective owners, no contribution whatever is due. The really difficult question arises in cases where the ship is wrecked by the agency of the very peril to avert which the sacrifice was made, but the goods or a part of them are saved; in such cases does that which is saved contribute for that which has been sacrificed? The question is one of great nicety and some doubt; for which reason," he says, "he has reserved its discussion to another chapter." In Section 5, page 924, Mr. Arnould enters into an elaborate investigation of this subject, the result of which may be recapitulated as follows:<br>1st. "In cases of losses arising from expenditures for the general benefit, they are to be reimbursed in full, though nothing be finally saved."<br>2d. "In case of losses arising |

American.

It must be successful, for if it does not save other property or interests, there is in the first place, no sacrifice, as it may be presumed that the property jettisoned would have been lost with the rest; and, in the next place, if no one is benefited by the sacrifice, no one can be called on to contribute a portion of what was saved for him, in order to make the loss equal.

1 Parsons, 288, 318.

See 2d Phillips, 99.

See *Hand Book*, page 120.

To constitute a claim for general average, it must appear that the sacrifice was necessary and voluntary; it must be intended for the safety of all concerned, and it must appear that thereby the property which is to contribute, was rescued from the imminent peril then impending; although it may be subsequently lost in the course of the voyage.

Therefore, where the master of a vessel which was dragging her anchors towards shore, cut away the masts to prevent her drifting, and thereupon she brought up, but after an hour she drifted again, and was wrecked, the cargo which was saved was held not liable in general average, inasmuch as the sacrifice of the masts did not rescue it from the particular peril then impending.

*Scudder v. Bradford,*  
14 Pickering, 13.

See also,

*Williams v. Suffolk Ins. Co.,*  
8 Sumner, 510.

*Witteridge v. Norris,*  
6 Mass, 125.

French.

If Jettison save not the ship no contribution can be levied upon her.

*Rogron*, 423.

It is understood, in the above quotation, that the vessel is lost by the same peril that the jettison was to save her from.

*F. B. D.*

| General Principles.                      | English Practice.   |
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|  | from sacrifices, no contribution is to be made where the <i>whole</i> adventure saved by the sacrifice subsequently perishes."  |
| [6] Immediate and necessary consequence. | 8d. "Losses arising from the sale of goods are contributed for like expenditures, when the goods were sold to defray expenses for which the ship-owner was bound to provide; and like sacrifices, when sold for the general benefit."   |
|  | 4th. "Where the ship perishes by the peril which the sacrifice was intended to avert, the goods saved should, it seems, only contribute for those sacrificed, in case the whole or greater part of the cargo be preserved."   |
| [7] Not the cause of danger.             | 5th. "But if immediate safety be procured by the sacrifice, and the ship afterwards perishes by another peril, the goods saved from the wreck, however damaged, must contribute for those sacrificed," at the value or price they would have produced in a damaged condition as compared with those saved." |
|  | The loss must be the necessary immediate effect or consequence of the general average act.<br><i>Baily.</i>   |
|  | The loss must not be one which would have been sustained if the general average act had not been performed.<br><i>Baily.</i>  |
|  | The loss must not be caused by the sacrifice of an article which is in itself the immediate cause of the danger which renders its sacrifice necessary.<br><i>Baily.</i>   |

## GENERAL PRINCIPLES.

| American.   | French.          |
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| <i>Nickerson v. Tyson,</i><br>8 Mass, 467.  |                  |
| <i>Maggrath v. Church,</i><br>1 Caines, 196.  |                  |
| <i>Sanson v. Ball,</i> 4 Dallas, 459.   |                  |
| <i>Sims v. Gurney,</i> 4 Binney, 524.   |                  |
| There is no contribution, if at the time of sacrificing the cargo, there was no possibility of saving it.               |                  |
| <i>Crockett v. Dodge,</i><br>12 Maine, 190.<br>So of the vessel run ashore, when there is no possibility of saving her. |                  |
| <i>Meech v. Robinson,</i><br>4 Wharton, 360.  |                  |
| As to this last, see<br><i>Hand Book</i> , page 137.  |                  |
| The same in practice.   |                  |
| Same as English.  | Same as English. |
| Same as English.  | Same as English. |

| General Principles.   | English Practice.  |
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| [8] Must be sacrifices not included under the contract of the Bill of Lading.   | All expenses incurred, and all ordinary manœuvres rendered necessary for the purpose of transporting the goods or keeping the ship in a fit state to transport them, are a direct consequence of the ship-owner's contract with the freighter, and no claim for general average can be sustained, unless the sacrifices and expenditures out of which it arises were of an extraordinary nature.<br><i>Arnould, 885.</i> |
|   | It must not be included in those ordinary duties and expenses which come under the head of wear and tear, and are paid out of the freight.<br><i>Arnould, 887.</i>   |
| [9] Whether it be necessary to consult with the crew or not, previous to the commission of an act of general average. | Not necessary.<br><i>Baily.</i><br>By the law of England, the master is not bound to consult with his officers or crew previously to the sacrifice, although this course, when practicable, is often prudent.<br><i>Maude &amp; Pollock, p. 192.</i><br><i>Hopkins, 8.</i>   |

| American.   | French.  |
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| If the owner of the vessel is the party claiming contribution, he is entitled to remuneration only for extraordinary expenses and sacrifices, and such as constitute a loss under a policy of insurance, since the ordinary expenses of navigating the vessel must be borne by the owner, as a means of earning freight.<br><i>2d Phillips</i> , 71.<br>See remarks in reply to query 1,<br>"General Principles." |  |
| It belongs to a ship-owner in general to furnish a sea-worthy ship, and so far as possible keep it in a condition suitable for prosecuting the voyage.<br><i>2d Phillips</i> , 82.  |  |
| A consultation between the master, officers, and crew, though in some cases proper to precede a voluntary sacrifice, is not essential to make a case of General Average.<br><i>Columbian Ins. Co. v. Ashby.</i><br><i>13 Curtis, Sup. C. Reps.</i> 176.   | Captain to consult officers, and owners of cargo, if on board; in case of difference of opinion, that of officers to prevail.<br><i>Rogron</i> , 410.<br><i>Code de Commerce, livre 2, tit. 12,</i><br>art. 410. |

## GENERAL AVERAGE.

| Jettison and its Consequences.             | English Practice.  |
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| [1] To prevent a vessel foundering.        | General Average.   |
| [2] To enable a vessel to escape an enemy. | General average  |
| [3] To float a stranded ship.              | General average.<br><br>As to charges when a ship is a wreck, Mr. Hopkins (page 48), thus states the English rule. "There are some charges incurred after a ship is stranded, or is in such a situation as to render it certain that she will never complete the voyage she is on, and so is to all purposes a wreck, which still partake of the nature of General Average. Although, generally speaking, the wrecking or stranding of a vessel breaks up the adventure, |

| American.  | French.  |
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| General average.   | General average.<br><i>Bordeaux.</i>   |
| If a cable be cut, and an anchor lost, or goods jettisoned to escape from an enemy, this is as certainly an average loss as if done to escape wreck.<br>1 Parsons, 306.<br>Stevens & Benecke,<br>Phillips Ed., 154.  | General average.<br><i>Bordeaux.</i><br><i>Emerigon</i> , in his treatise on Insurance, ch. xii., sxli., § 5, Meredith's ed. 480, gives a very good illustration of this. The master of a French vessel, having been pursued by two frigates, and his flight being intercepted by two others ahead, as soon as it became dark, lowered his boat into the sea, with a mast and sail, and a lantern at the mast-head, and then changed his course, and sailed all night without a light, and in this way escaped. The value of the boat was made good by a general average contribution. |
| General average.<br>1 Parsons, 292.  | General average.<br><i>Bordeaux.</i>   |
| Similar with the English, with the exception, that the expenditures are General Average until the interests (vessel and cargo) are wholly and "bona fide" separated. After the cargo is actually removed from the vessel, it must be clear that subsequent efforts to get her off, are for the ship's benefit solely, and so a special charge. |  |

Jettison and its Consequences.English Practice.

and so dissociates the i yet the expenses allud not apply separately to eral interests, but are t vided over them, *ad* Thus salvage servio tempts, though ineffect get the ship off; watchi general attendance of Agent and other agents mentation and other e intended for the whole ty, without exception, a thus divided. It is n there is any longer a union among the severest—*for this is now de*—but because this is manner of applying the to the various interest there are charges which seem to apply, at first more than one of the ix perhaps, which on thought will be found an applicability to the v them collectively. The charge of cargo from lying on the rocks may be a step taken only wit ence to the individual and safety of the carg and one towards which could not be called upon tribute. But if it be t impossible to get the away from the rocks wh cumbered by the cargo ing in her, or if the w the cargo renders it I that she will be broken t where she lies, it is pl the ship does really pa in the benefit of measure were primarily und for the salvage of the

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American.

French.

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Jettison and its Consequences.English Practice.

So again, the cutting away a ship's masts when she is a hopeless wreck may be very advantageous to the cargo in preventing the rolling of the vessel on the rocks, which would hasten her utter destruction and the loss of every thing on board."

- [4] To get rid of goods which endanger the vessel and the property in her. (Cargo heated, &c.) Not General Average.
- [5] When the jettison does not save the vessel. General average on property eventually saved.

*Arnould, 925*

| American.   | French.                                      |
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| Sacrifices so made, constitute a claim for General Average, at the estimated value the material would have produced at scene of wreck as compared with other materials there sold. It must be clearly shown that the loss arose from the sacrifice and that there was every probability of saving the sacrificed parts with the other materials.  |  |
| Not General Average.  | Not General Average                          |
|   | Not General Average.<br><i>Rogron</i> , 423. |
| It has been decided in the Supreme Court of the United States, in the case of <i>Barnard v. Adams</i> , cited in <i>query 3, "General Principles,"</i> that the "attempt to avoid the imminent common peril must be successful." The reason for this rule is obvious. That which is <i>not saved</i> is in no way benefited by the sacrifice, and, therefore, in no way under the implied obligation of compensating for it. But the question if there be a sacrifice for other property, and that other property <i>is saved</i> , must it also appear that it was <i>saved by the sacrifice</i> , or, in other words, would have been lost without it, in order to entitle the owner of the property sacrificed to contribution, is more difficult of solution. In answer to this question, Mr. <i>Parsons</i> , vol. 1, p. 319, says: "Upon the whole we think, that the weight of reason agrees with what seems to us the weight of authority, that if there be a voluntary sacrifice of part of the cargo, the whole cargo is saved, and the sacrifice is entitled to contribution." |  |
| The French Code provides, that, "if the jettison does not save the ship, there is no ground of contribution."<br><i>Code de Commerce</i> , 1. 2 tit. 12, a. 234; Ord. tit. Du Jettison, a. 15.  |  |

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Jettison and its Consequences.

English Practice.

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American.

tary sacrifice, made for good cause, and with a reasonable prospect of saving thereby other property which would otherwise be lost, and this other property is saved in fact, it must contribute to the loss, whether it was saved by that or by other means."

Mr. *Phillips*, vol. 2, p. 97, says: "The doctrine that whatever is eventually saved must contribute, though the impending peril, as capture or shipwreck, on account of which the sacrifice was made, is not "*therby*" avoided, or is not avoided at all, is well supported by authority and on principle."

*Pothier* is of opinion, that, if a part of the property is sacrificed for the common benefit, whatever is eventually saved must contribute for the loss, whether the impending danger is avoided or not. *Ins.* n. 128, 414.

Mr. *Hughes* leans to the same doctrine (*Ins.* 288, n., 294), and gives the reason, that, "if a vessel should be in danger, and after goods have been sacrificed in order to lighten her, should nevertheless be wrecked, the goods saved or picked up must contribute for the jettison, because it has been resorted to with a view to save the ship and the rest of the goods, and because, if those goods had not been sacrificed, their owner might have saved or recovered them all, or in part, as the other owners have done, but of which possibility he was deprived by the jettison."

*Benecke* is decidedly of the same

French.

| <u>Jettison and its Consequences.</u>                  | <u>English Practice.</u>   |
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| [6] Cargo under deck.                                  | General Average.   |
| [7] Cargo in the poop.                                 | Disputed.<br>}   |
| [8] Cargo in a house on deck.                          | Disputed.<br>}   |
| [9] Cargo on deck, where deck loads are not customary. | Not General Average.   |
| [10] — Where they are.                                 | In practice General Average, but general contribution not binding on the Underwriter, unless his consent to risk of deck cargo has been specially obtained previously.<br><i>Hopkins, 20</i> |

| <u>American.</u>  | <u>French.</u>   |
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| opinion. Stev. & Ben., by Phillips, 105.<br>And this doctrine seems to predominate in the more recent jurisprudence, and is assented to by many experienced underwriters and staters of averages. See also <i>Hand Book</i> , page 120.   |  |
| <b>General Average.</b>   |  |
| Where cargo is stowed in a permanent house or building on the deck of the vessel in accordance with general usage and custom to that effect, and is jettisoned for the common benefit, it is entitled to be paid for in General Average."   | General Average.<br><i>Rogron</i> , 421                                  |
| <b>Not General Average.</b>   | Not General Average, except in coasting voyages.<br><i>Rogron</i> , 421. |
| Mr. Phillips, vol. 2, p. 75, says: "The better doctrine seems to be, that a jettison of a deck-load is to be contributed for in general average where the stowing of the jettisoned article is justifiable, and the other parties interested have notice by the policy, or by usage, or otherwise, that such articles may be so carried, and there is no plainly established usage negativing the right to claim such contribution."<br>See <i>Hand Book</i> , page 87. | General Average in coasting voyages.<br><i>Bordeaux.</i>                 |
| That "Deck Cargo" should be contributed for has been recently decided, in the Court of Appeals, State of New York, case of <i>Harris v. Moody &amp; Telfair</i> .   |  |

| Jettison and its Consequences.          | English Practice.  |
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| [11] Ship's stores.                     | Of the ship's stores cast into the sea, only those are allowed to enter into the General Average which were in secure and proper situations previously.<br><i>Hopkins</i> , 9.   |
| [12] Water casks on deck.               | Not General Average.<br><i>Hopkins</i> , 9.  |
| [13] Chains on deck.                    | Not General Average, except when in the vicinity of land.  |
| [14] Ship's stores in a state of wreck. | Considered part of the accident which reduces them to a "state of wreck."  |
| [15] Freight on cargo jettisoned.       | The owner's freight being, so to speak, contained in the goods, shares the fate of the merchandise, and is jettisoned with the goods thrown overboard. The lost freight is, therefore, also recoverable by General Average contribution.<br><i>Hopkins</i> , 10. |

## DAMAGE OR LOSS TO CARGO—

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| [16] — by being got on deck in order that it may be jettisoned, or to get at other goods which the crew intended to jettison. | General Average.  |
| [17] — by water getting down the hatches whilst jettison is taking place.   | General Average.  |
|   | Mr. <i>Hopkins</i> , page 14, says : "It sometimes happens that in opening the hatches to effect a jetti- |

| <u>American.</u>  | <u>French.</u>                         |
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| Same as English.  | Same as English.<br><i>Bordeaux.</i>   |
| General Average, if jettisoned from the place where they are usually and properly carried.  | Same as English.<br><i>Bordeaux.</i>   |
| If jettisoned from the place where they are usually carried, General Average.   | Same as English.                       |
| Not General Average.  | Same as English.                       |
| Same as English.<br><i>2d Phillips, 85.</i><br><i>The Nathaniel Hooper,</i><br><i>3 Sumner's R., 542.</i>   | General Average.<br><i>Bordeaux</i>    |
| The freight contributed for in General Average, contributes on the whole amount, the deduction of one-half or one-third to cover expense of earning freight is taken from the freight actually earned only. |  |
| General Average.  | General Average.<br><i>Rogron, 400</i> |
| General Average.  | General Average.<br><i>Rogron, 400</i> |

Jettison and its Consequences.English Practice.

son, an occasion which is necessarily most frequent in bad weather, water enters the hold by the hatchway, and injures the goods stowed in the neighborhood. On proposing this case there scarcely seems room for a doubt that such damage should be claimed in General Average, similarly to jettison, not only as being quite analogous to that, but actually involved in the act of jettison itself. Yet the question as to how such damage should be disposed of is by no means a settled one. I suppose few people would be found to dispute the principle which makes such losses General Average, except upon some fine-drawn argument about the extent and intention, the mediate and immediate consequences of voluntary acts. Such reasonings appear too metaphysical to apply to mercantile questions, which should be answered in a simpler manner. I would only ask the advocates of such fine distinctions whether, with our finite powers, we can ever foresee *all* the consequences of any act of ours ; and whether we can curb or prevent effects depending on such acts from extending far beyond the limits we at first intended. Take the analogous case of water poured on a burning house to extinguish the flames, and which water destroys the books in the library ; will any one urge in favor of an insurance office not paying, that damage by water was *only incidental* and unintentional, and, therefore, re-

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American.

French.

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Jettison and its Consequences.General Principles.

moved from the rule makes the insurance liable for fire ? I am sure no such argument was maintained for a moment. There is, however, more reason in an objection made to this kind of constituting General Average on the ground of expense. This is the true root of objection, which, when it is avowed, is entitled to weight. In principle it does not seem to be of much importance whether cargo be thrown overboard or water be thrown into the cargo, provided that the act were required for the salvation of the joint interest and was undertaken for the common safety. But if it be urged that the admission of claims of this kind opens a dangerous door to fraud and leading to extreme uncertainty ; if it be shown that it is next to impossible to indicate what share of average did really accrue in consequence of a voluntary act, and how much of it arose from causes and other involuntary causes ; if it be told us that the matter of fact, that when this principle was acted on, numerous claims were made principally in certain trades, are known to have been fraudulent,—we should be inclined to say that though we admit our rule as a matter of principle, yet it may be better to part from it in some cases on the ground of convenience, for the avoidance of fraud and uncertainty, and to draw

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American.

French.

Jettison and its Consequences.

[18] — by water getting down in consequence of a mast being cut away.

[19] — by putting it into the water, or into lighters alongside a ship which is aground, in order to get the ship off.

English Practice.

arbitrary lines,—only admitting frankly that they are arbitrary, and are drawn on account of the reasons stated.

But I would never resort to this arbitrary line where a case is clear, definite, and free from suspicion. In the instance under discussion, I have always been of opinion that this description of danger is most properly General Average, and should not be rejected from recovery as such except where uncertainty prevails as to its cause and limits."

General Average.

| <u>American.</u>  | <u>French.</u>                                       |
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| <p><b>General Average.</b><br/> In <i>Magrath v. Church</i>, 1 Caines, 196, the vessel loaded with corn, encountered severe weather, and a mast was cut away for the general preservation. In cutting it away, it was splintered, and in consequence thereof water entered the hold, and damaged the corn. <i>Kent J.</i>, said: "The corn being damaged by the cutting away of the mast, is to be considered, equally with the mast, a sacrifice for the common benefit—a price of safety to the rest; and it is founded on the clearest equity, that all the property and interest saved ought to contribute their due proportion to this sacrifice." See also. <i>Saltus v. Ocean Ins. Co.</i>, 14 Johns, 138.</p> | <p><b>General Average.</b><br/> <i>Bordeaux.</i></p> |
| <p><b>General Average.</b><br/> 1 <i>Parsons</i>, 297.<br/> 2 <i>Phillips</i>, § 1288.<br/> <i>Benecke &amp; Stevens</i>, 183.<br/> <i>Marshall on Ins.</i>, 538.</p>   | <p><b>Disputed.</b></p>                              |

| <u>Jettison and its Consequences.</u>  | <u>English Practice.</u> |
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| [20] — by chafing or breakage in consequence of stowage being damaged owing to a jettison. | Disputed.                |
| DAMAGE DONE TO SHIP—   |                          |
| [21] — in order to effect jettison.  | General Average.         |

[22] — Jettison caused by unseaworthiness of the vessel.

| <u>American.</u>   | <u>French.</u>   |
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| General Average.   | General Average.<br><i>Rogron</i> , 421  |
| General Average.   | Those effects which are least necessary, heaviest, and least valuable are to be jettisoned, then the cargo from between decks at the choice of the captain after advising with his officers.<br><i>Rogron</i> , 411. |
| Not General Average.<br>If the unseaworthiness of the vessel at the time of sailing on the voyage, caused, or contributed to produce, the necessity for the jettison, the loss is not within the exception of the perils of the seas, and the vessel is liable for the whole value of the goods thrown overboard. 19 <i>Howard</i> , 162, 166; 17 <i>Howard</i> , 100, 110; 18 <i>Maine</i> , 857. |  |

**Voluntary Sacrifice of Ship's Materials  
or Outfit.**

**CUTTING AWAY MASTS, SAILS, &c.**

[1] — to righten a ship on her beam ends.

**English Practice.**

**General Average.**

The rule is laid down by Mr. Hopkins, page 32, as follows: "It not unfrequently happens that by a sudden squall, or some similar cause, a ship under canvass is thrown on her beam-ends, with her yard-arms and part of her sails in the water, and owing to the last circumstance, or from the shifting over of the cargo, she is prevented from rising upright again. To relieve her from this critical position, it becomes necessary to cut away the weather rigging, the sails, or the masts themselves. This is a loss which must be made good by General Contribution. The more imminent the danger from which the vessel was rescued by the cutting away, the greater the justification for such a sacrifice. In making good the damages and losses, the question occurs, What will be the just sum to charge the parties benefited? For the materials cut away may have been old and worn, whilst those by which they are replaced are generally new; and if so, the shipowner actually benefits by the accident in the improvement of his ship. This improvement by receiving new for old is sometimes called *Melioration*. To avoid giving the owner the advantage of melioration, repairs coming under General Average Contribution have been placed on the same footing as Particular Average, viz., one-third part of their amount both in regard to materials and labor

| American.        | French.                                 |
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| General Average. | General Average.<br><i>Rogron, 400.</i> |

**Voluntary Sacrifice of Ship's Materials  
or Outfit.****English Practice.**

being deducted. It is true that the assumption on which we proceed in making this invariable deduction is an arbitrary one. In many cases no advantage whatever is gained by the owner in consequence of the repairs effected, whilst there are other instances where the melioration is probably nearer two-thirds than one-third. It would be so inconvenient and so difficult to endeavor to fix in each individual case the extent of the benefit, or melioration, by repairs, which as before mentioned may vary from absolutely nothing to a very large proportion, according to the age and wear of the ship and her stores, that, practically, the deduction of a third is found an equitable rule, and is sanctioned by general custom. If, however, the sails, &c., cut away were quite new at the time of their loss this rule is departed from, and the whole cost of them, without deduction is allowed."

[2] — to prevent a ship driving on shore.

**General Average.**

A sail or other parts of the ship may be sacrificed without being cut away. A ship driving towards the shore in a gale or squall may have had her sails blown away by the violence of the weather, and it may be quite plain that any sail hoisted must almost inevitably share the same fate ; yet it may be the ship's only chance of escaping from that lee shore, to set a sail or a tarpaulin in the rigging as a last resource, to try and wear her

DAMAGE TO SHIP.

269

American.

French.

General Average.

See General Principles,  
query No. 1.

General Average.

**Voluntary Sacrifice of Ship's Materials  
or Outfits.****English Practice.**

head round ; and the purpose is sometimes answered if the sail, &c., so exposed only last a few minutes or seconds. This is an unusual service of the ship's furniture, and must rank as a voluntary sacrifice.

*Hopkins, 34.*

[3] — sails blown away when let General average.  
go to righten the ship.

[4] — bulwarks cut away to re- General average.  
lieve a vessel of water  
which floods her decks.

[5] — masts cut away when in a Not General Average, on the state of wreck. ground that the original cause is the accidental loss of the mast ; and the cutting away afterwards is considered only the consummation of the inchoate act.

This is stated by Mr. *Hopkins* (page 54) to be the *practice* in England. Mr. *Arnould*, however, lays down the rule as follows : "If a mast be carried overboard by the wind, it is, of course, only a particular average loss ; if, however, a mast or spar be snapt or sprung by the wind, and left hanging in the rigging, so that *in order to save the ship and cargo*, it becomes necessary to cut away entirely both the mast and the rigging,

| American.  | French.   |
|--|---|
| General Average.<br>Mr. Benecke (page 185, and 186, London Ed., 1824) is of opinion, that sails blown away are subjects of contribution, when they are let go for the purpose of causing the vessel, when on her beam-ends to right; and Mr. Phillips (2 ed., p. 83) says "the rule seems plainly to be just."   | General Average.  |
| General average.<br><i>Nelson v. Belmont</i> , 5 Duer, 310.<br>1 Parsons, 290.   | General average.  |
| If masts are overboard, and, hanging by the ship, embarrass or endanger her, and are cut away, this might be a General Average loss, but only for the value of the masts and rigging as they then were, for only that is voluntarily sacrificed; and this value would generally be nothing.<br>1 Parsons, 306.   | General average.<br><i>Rogron</i> , 400.<br>Of course only to the extent of their supposed value in a state of wreck. |
| In the case of <i>Nickerson v. Tyson</i> , 8 Mass., 467. The masts, spars, rigging and sails of a vessel at sea were carried away by the violence of the weather, and after hanging by the vessel's side for half an hour, were cut loose for the preservation of the vessel and cargo, the owners were held not entitled to contribution, unless, indeed, for the loss. |   |

**Voluntary Sacrifice of Ship's Materials  
or Outfits.**

**English Practice.**

and throw both overboard, the damage caused by the act of so cutting them away is a General Average loss, and is to be contributed for to the extent of the value of the mast and rigging, as they lay after the accident." And in support of this doctrine, he cites, the American case of *Nickerson v. Tyson*, 8 Mass., 467.

2 Arnould on Ins., page 896.

- [6] — damage to copper by wreck of mast cut away before it is finally released from the vessel.

Disputed.

Mr. *Hopkins*, page 36, says: "When masts and spars which have been cut away, in falling injure the deck, destroy rails and bulwarks, and do other damage, the repairs of such damage belong to General Average. And if after the mastage has fallen into the water, it strikes against the ship's sides and knocks off or injures the metal sheathing, it may well be supposed that this damage is likewise claimable as General Average. But here the present custom is inconsistent with itself; for it is held that the injury thus sustained by the sides and sheathing does not form an item for general contribution, but falls on the ship alone. There can be little doubt that, as a matter of principle, this practice is erroneous; for it seems illogical, in a progressive series of consequences clearly dependent on and traceable to one cause, to classify a certain number of the links of the chain in the category, and to make a new rule

| American.  | French.                              |
|--|--------------------------------------|
| <p>incurred in separating the masts and rigging from the hull, after they were carried overboard by the violence of the weather. The contribution could only be proportionate to the value of those articles, when thus hanging by the side of the vessel. By some adjusters, the value of the wreck itself, as a wreck, is allowed in general average. But this is not usual in New York.</p> <p>General Average.</p> | <p>Not General.</p> <p>Bordeaux.</p> |
|  |                                      |

**Voluntary Sacrifice of Ship's Materials  
or Outfits.****English Practice.**

for the succeeding link listened to the argument of this distinction, have always appeared convincing enough. It is one of those subjects which draws the arbitration of demarcation. It is visible to stop short in the middle of a train of consequences when difficulties might follow them out to extreme limits—but if such to be done simply as of convenience or convenience should not be attempted defended on other grounds.

[7] — a spar or sail cut to save a mast. Not General Average.

[8] — stern boat cut away.

Not General Average under extraordinary circumstances.

| American.   | French.                             |
|---|-------------------------------------|
|   |                                     |
| General Average if the cutting away is the means of saving the mast.  |                                     |
| The right to claim contribution evidently depends upon the usage to carry the boat in this situation, and upon the expediency of so carrying it. The loss of a boat, cut away from the stern-davits, was considered to be a subject of General Average in New York. <i>Lenox v. United Ins. Co.</i> , 3 Johns Cas., 178.<br>Mr. Parsons says (vol. 1, p. 289) : "This has been a somewhat disputed question ; but a ship must have its boats, and they must be somewhere, and if they are where they ought to be and are then cast off to relieve the ship, the case is precisely the same on principle as if the masts were cut away." See also, <i>Hall v. Ocean Ins. Co.</i> , 21 Pick, 472. | Same as English.<br><i>Bordeaux</i> |

| Voluntary Sacrifice of Ship's Materials or Outfit.                        | English Practice.   |
|---|---|
| <b>ANCHOR AND CHAIN VOLUNTARILY SLIPPED—</b>                              |   |
| [9] — to avoid being driven on shore.                                     | General Average.<br>If a vessel is driving with her anchor down; or being in danger, she lets go her anchor, and it hooks or drops into moorings, rocks, &c., and she is obliged to slip, then it becomes General Average.  |
| [10] — to escape an enemy.  | General Average.  |
| [11] — to avoid a collision.  | General Average.  |
| [12] — when anchor, temporarily foul, is slipped to avoid imminent peril. | In case of a vessel fouling another ship's ground tackle, and slipping from her cable to extricate herself,—if the anchor could have been recovered in ordinarily fine weather, but a gale coming on makes it highly dangerous for her to remain where she is, and the cable is in consequence cut or unshackled, the loss then ranks as General Average. |
| 13] — when foul under ordinary circumstances.                             | Not General Average.<br>If an anchor by which a vessel is moored, is lost by the parting of the cable, the loss is denominated "wear and tear," and is borne alone by the owner. It is an ordinary casualty to which vessels are liable. In fine weather and usual circumstances  |

| American.   | French.                                   |
|---|---|
| Mr. Phillips (vol. 2, p 75) says:<br>" If it be necessary to carry the boat in this manner for the safety of the ship or crew, there seems to be no reason why the cutting it away should not be the occasion of a contribution." |   |
| General Average.<br>See <i>Hand Book</i> , page 89.   | General Average.                          |
| General Average.  | General Average.                          |
| General Average.  | General Average.                          |
| General Average.  | General Average.                          |
| Not General Average.<br><i>Hand Book</i> , 89.  | Not General Average.<br><i>Bordeaux</i> . |

**Voluntary Sacrifice of Ship's Materials  
or Outfit.****English Practice.**

the chain, in this case, then hanging loose, would be hove on board again. But if after parting, the ship drives and is in danger, and the crew is too much occupied in other necessary manœuvres to heave in the chain, or if the chain by its weight lists the vessel dangerously on one side, the loss of the remainder of the chain by slipping it is, very properly, the subject of General Average.

*Hopkins, 30.*

- [14] — chain parted in consequence of anchoring in an improper place. Not General Average.
- [15] — by steamers or lighters, in forcing off a stranded ship. General Average when unavoidable.
- [16] — when the result of mismanagement. Not General Average.
- [17] — Voluntary damage to ship, which is nevertheless totally lost, part of the cargo being in lighters, and thus saved at the time of the voluntary sacrifice. Not General Average.

| American.   | French.  |
|---|--|
| Not General Average.  | Not General Average.<br><i>Bordeaux.</i><br>Not General Average as a rule at Martinique or Bourbon in winter season. |
| Same as English.  | Same as English.   |
| Same as English.  | Same as English.   |
| Not General Average.<br>In case of a sacrifice of a part of the ship or cargo, for the general safety, if the property escapes the impending peril and is saved, a contribution is to be made by what is finally saved of the ship, cargo, and freight. But if the goods thrown overboard, or put into boats, for the general safety, are saved, and the ship and rest of the cargo are lost, no contribution is to be made. If, however, the ship escapes the peril on account of which a jettison is made, and is afterwards wrecked, still what- | Not General Average.<br><i>Bordeaux.</i>   |

| Voluntary Sacrifice of Ship's Materials<br>or Outfit.                    | English Practice.  |
|--|--|
| <p>Damage to ship—<br/> [18] — by voluntarily running ship on shore.</p> | <p>Not General Average.<br/> It is stated in <i>Arnould</i> on Ins., p. 898, that "where the ship is voluntarily run ashore to avoid capture, foundering, or shipwreck, and is afterwards recovered so as to be able to perform her voyage, the loss resulting from the stranding is to be made good by General Average Contribution. There is no rule more clearly established than this by the uniform course of maritime law and usage." And after quoting the corresponding dictum of <i>Emerigon</i>, Mr. <i>Arnould</i> goes on to say: "The rule has been laid down in the same way by Lord <i>Tenterden</i> in this country, and by Chancellor <i>Kent</i> in the United States, where it has received the sanction of several decided cases." And Messrs. <i>Maude &amp; Pollock</i>, after following Mr. <i>Arnould</i>, in his view, remark, "It will be observed from the cases cited above, that the claim to contribution may extend to collateral damage necessarily connected with the main injury which forms the subject of General Average." <i>Maude &amp; Pollock</i>, p. 192. But notwithstanding these opinions, which in themselves and from their accessories are of much weight, a different rule prevails in practice, and each of the co-adventurers is made to bear his own loss in cases of voluntary stranding.</p> |

| American.   | French.                                  |
|---|--|
| ever is saved from the wreck<br>must contribute for the jettison.   |  |
| General Average.<br><i>Hand Book</i> , 137.<br>If it appeared to the master that<br>his vessel must inevitably be<br>driven on shore, and intention-<br>ally, for the better security of<br>the property and persons en-<br>gaged in the adventure, he gave<br>her a direction to what he sup-<br>posed to be, and what proved to<br>be, a part of the shore where<br>her stranding would be less in-<br>jurious and hazardous, and the<br>vessel is totally lost, but the<br>cargo saved, this constitutes a<br>voluntary sacrifice of the vessel,<br>and amounts to a General Aver-<br>age. <i>Barnard v. Adams</i> , 10<br>Howard's U. S. Supreme Ct.<br>Reps., 270. | General Average.<br><i>Rogron</i> , 400. |

Voluntary Sacrifice of Ship's Materials  
or Outfit.English Practice.

**Mr. Hopkins** (page 40) a writer, and Average Stater of distinction in London, says: "The Underwriters at Lloyd's, put forward two reasons to show that this damage is not of the nature of General Average. 1st. *The indemnity of the injuries to the ship purposely entered upon by running her ashore* 2nd. That in the case of a ship about to founder being run ashore, her impending fate was *not probable*, but *absolutely certain*. Had she been left at sea she must have sunk; and the driving her on rocks or sands was a desperate measure, a mere *sauve que peut*, and that consequently any danger so incurred must be borne individually by the sufferer, and not be made good by General Contribution.

Though this reasoning has been left unquestioned through a long series of years; the argument is not sound. In all cases of General Average it is the rescuing the joint interests from threatened loss or injury which is the ground of the claim;—the more imminent the danger avoided, the more clear is the advantage gained through the means employed. If the dreaded destruction of ship and cargo seemed at the moment it was escaped an absolute certainty, the more cheerfully, it is to be supposed, would all the persons whose property has been saved, join in reinstating the loss of the suffering proprietor. If I give my hearty thanks to the man who saves me from drowning by

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American.

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French.

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**Voluntary Sacrifice of Ship's Materials  
or Outfit.****English Practice.**

snatching me out of the shallow water into which I had just fallen, are not my gratitude and rewards due in a yet higher degree to him who brings me on shore out of deep water, when my life was on the very verge of extinction ? And if the saving of a ship and her cargo by some voluntary act from possible loss be the ground of General Average Contribution, *a fortiori* it must be the ground of the same when the probabilities of loss have so increased as to amount to an almost certainty."

[19] — by scuttling, to extinguish fire.

Repairing hold General Average ; remainder not General Average. Mr. Arnould, vol. 2, p. 900, states the law to be : " If part of the ship be intentionally cut away and damaged, in order to come at or extinguish an accidental fire, which threatens the destruction both of ship and cargo, there can be no doubt that such damage gives a claim to contribution."

[20] — by scuttling when no danger to cargo.

[21] — by carrying a press of sail to avoid a lee shore, or capture.

Not General Average.

*Covington v. Roberts*, 5 B & P., 378. In this case a vessel was captured by a French privateer,

| American.   | French.   |
|---|---|
| <b>General Average.</b><br><br>But damage done to ships, in order to extinguish the spontaneous combustion of part of the cargo, has been held both in France and this country, not to give a claim to confirmation.<br><i>Crockett v. Dodge,</i><br>3 <i>Fairfield R.</i> , 190. | General Average, if the ship and cargo are saved. <i>Bordeaux.</i><br>Rule as to damage caused by spontaneous combustion, same as American.<br><i>Emerigon</i> , chap. xii., sect. 17,<br>vol. 1, p. 430, ed. 1827. |
| <b>Not General Average.</b><br><br>Damage to the ship in extinguishing a fire, originating in spontaneous combustion is held in Pennsylvania not to belong to General Average, where the cargo is not in danger.<br><i>Meech v. Robinson,</i><br>4 <i>Wharton</i> , 360.          | Not General. <i>Bordeaux.</i>   |
| <b>Not General Average.</b><br><br>Judge Parsons (Mar. Law, vol. 1, p. 305), says: "If the sails or spars are lost by an extraordi-   | General Average, when to avoid an enemy. <i>Rogron</i> , 400.<br>Accepted in <i>Bordeaux</i> , in both  |

Voluntary Sacrifice of Ship's Materials or Outfit.English Practice

but, on account of a h  
the privateer could not  
session of her. To  
escape, she carried a  
press of sail, in conse  
which she was much  
opened most of her  
carried away the he  
mainmast, but finally  
in getting away. He  
damage to the vessel  
subject for General  
*Sir James Mansfield.*  
"This is only a co  
risk. If the weather  
rather better, or the s  
er, nothing might  
pened."

Mr. Arnould (vol. 2, p. 8)  
"When the ship-owner  
to save the ship und  
stances of danger,  
hazardous manœuvres  
ult in the destruc  
part of the ship and ri  
when, for instance,  
away sails, or springs  
attempting, under a  
canvas, to escape an e  
lee shore, this has be  
this country, and also  
not to give a claim t  
**Average Contribution**  
because the manœ  
consisted in the emp  
the ship's tackle for  
*known and usual p*  
navigation, and the  
within the scope of i  
nary exertions to whic  
owner is bound by hi  
with the freighter."

[22] — by worms at a port of Not General Average.  
refuge.

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American.

mary exposure in an emergency, as by an extreme press of sail to escape capture, or wreck, this would come near to an average loss; but the better opinion is, that it should rather be considered only as a loss by a sea peril."

See also, *2d Phillips*, p. 81.

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French.

cases as General Average, if ship is saved.  
But see *Boulay-Paty* on *Emer-  
igon*, vol. 1, p. 610, cd. 1827.

Not General Average.

Not General Average.

*Bordeaux.*

**Voluntary Sacrifice of Ship's Materials  
or Outfit.**

- [23] — by defence against pirate or enemy.

**English Practice.**

The damages received by a vessel whilst defending herself against an enemy, are not claimable as General Average ; nor the cost of the ammunition expended ; nor the expense of curing the wounds of the crew so engaged. In *Taylor v. Curtis*, 6 Taunt, 608, claim was made for Contribution for damage sustained by an English merchant vessel, in beating off an American privateer ; and for expenses incurred in healing the wounded seamen. Chief Justice Gibbs said : "It was the duty of the sailors to defend the ship. By so doing all parties have been benefited. But in what respect have the captain and crew exceeded their proper duty ? What sacrifice have they made which they were not bound to make ? The expense of medical and surgical aid must be borne by the parties themselves. I am of opinion that it does not fall within the principle of General Average." Mr. Holt gives reasons in support of this opinion. 1 *Holt's R.*, 194. W.

**SHIP'S MATERIALS OR STORES  
USED FOR PURPOSES NOT  
CONTEMPLATED IN THE ORDINARY  
COURSE OF THE VOYAGE, VIZ. :**

- (24) Anchors and chains damaged in forcing a stranded ship off. General Average
- (25) Sails damaged under similar circumstances. General Average.

| American.   | French.                                  |
|---|--|
| <i>Mr. Benecke</i> is of opinion, that damage to ship and cargo by an engagement with an enemy in defence of the property, ought to be a subject of General Average. London Ed., 1824, p. 231; Benecke & Stevens, by Phillips, 154. | Not General Average.<br><i>Bordeazu.</i> |
| No decision to this effect has, however, been made in England or the United States, but on the contrary, it has been held in England that the claim cannot be sustained. The writers do not agree upon this question.               |  |
| General Average.  | Disputed<br><i>Bordeaux.</i>             |
| General Average.<br>19  | Disputed.<br><i>Bordeaux.</i>            |

| <u>Damage to Ship's Materials and Stores.</u>  | <u>English Practice.</u>  |
|--|---|
| (26) Boats lost or damaged do.   | General Average.  |
| (27) — by sails cut and altered to serve for others lost.  | General Average.  |
| (28) — by using one kind of sail instead of another.   | General Average under some circumstances only.  |
| (29) — by using ship's materials for purposes for which they were not constructed, in order to save all the interests concerned during imminent peril. | General Average.<br>In general, the diversion of stores or any materials of a ship from their original and intended purpose, to some other use necessary but not contemplated, brings them within the class of General Average. So, sails used to cover the deck or hatches after an accident to prevent water going below, or hauled under the ship's bottom to stop leaks there; so, a hawser or ropes employed to support a mast or to secure a rudder; so, even, coils of new rope, being the ship's stores, used on any extraordinary emergency for the general safety of ship, cargo, and freight, so, ropes and other articles used for chocking and securing a cargo of iron or other heavy goods which has broken adrift in the hold and endangers the general safety, are all classified under this head. But if, when owing to straining the decks have become leaky, and to protect the cargo below from drip, sails are taken into the hold to cover the perishable merchandise and are thus injured or destroyed, the case is different; the sole object of the sails being so used is to cover the cargo and prevent injury to |

| <u>American.</u>  | <u>French.</u>                |
|---|-------------------------------|
| General Average.  | Disputed.<br><i>Bordeaux.</i> |
| Not General Average.<br>See "General Principles,"<br>Query No. 1.   | General Average.              |
| Same as English.  | Same as English.              |
| General Average.<br>If any part of the ship or her<br>tackle be applied for the com-<br>mon benefit to some purpose<br><i>different from its ordinary use,</i><br>the loss thence arising is a Gen-<br>eral Average loss, as if spars<br>are cut up to construct a rudder,<br>or sails and cordage used to stop<br>up a leak, &c. | General Average               |

| <u>Damage to Ship's Materials and Stores.</u>                                   | <u>English Practice.</u>  |
|---|---|
|   | it, and the loss or damage received by them is applicable to the cargo only.<br><i>Hopkins, p. 85</i> |
| (30) Jury masts and ship's stores used in securing masts.                       | General Average in most cases.  |
| <b>LOSS ON FREIGHT.</b>   |   |
| (1) By voluntary stranding.   | Not General Average.  |
|   |   |
| (2) On cargo shut out at a port of refuge.                                      | Disputed.   |
| <b>LOSS OR DAMAGE TO CARGO</b>  |   |
| By discharging it from a stranded vessel.                                       |   |
| (1) — unavoidable.  | General Average in some cases.  |
|   |   |
| (2) — when the result of mismanagement.   | Not General Average.  |
| (3) Loss of Cargo in discharging when a vessel is at a port of refuge.          | General Average in some cases.  |
| (4) Loss by sales effected to pay General Average expenses at a port of refuge. | General Average.  |
| (5) — to pay any other expenses.  | Charged to the interest for which those expenses were incurred.                                       |

| <u>American.</u>  | <u>French.</u>   |
|---|--|
| as English.   | General Average.   |
| General Average.<br>In case of contribution for a loss<br>sustained by the ship by voluntary strand-<br>ing, the freight is to be con-<br>tributed for.<br><i>American Ins. Co. v. Ashby,</i><br>13 Peter's Sup. Ct. R., 343. | Disputed.<br><i>Bordeaux.</i>  |
| General Average.  | Disputed.  |
| General Average.  | General Average if the ship has<br>been stranded for the common<br>interest, not general if by una-<br>voidable circumstances.<br><i>Bordeaux.</i> |
| General Average.  | Not General Average.   |
| General Average.  | Same as English.   |
| General Average.<br><i>3 Mason</i> , 255, 260.<br><i>2 Metcalf</i> , 140, 144.  | General Average.<br><br>Same as English.<br><i>Bordeaux.</i>   |

## GENERAL AVERAGE.

| Loss or Damage to Cargo.   | English Practice.  |
|--|--|
| (6) Loss or Damage by pouring water down to extinguish fire.   | Not General Average.<br>Whatever damage the <i>cargo</i> is sustain by that course must borne by the cargo, and the <i>s</i> must bear by itself all inj done to it by the spoiling of niture, stores, provisions, cha books, instruments, &c. |
| (7) — by scuttling a ship to extinguish fire.  | Not General Average.   |
| (8) — by running the vessel on shore.  | Not General Average.   |
| (9) Loss of Interest on capital by detention at port of refuge.  | Not General Average.   |
| (10) Loss or Use of vessel do. do.   | Not General Average.   |
| (11) Loss or Damage—voluntarily—to the property of others for general benefit<br><i>E. G. If the crew of one vessel is obliged to cut the cable of another to preserve their own ship and cargo.</i> |  |

## COMPENSATORY CHARGES.

Sometimes the General Average expenses which would have been

| <u>American.</u>   | <u>French.</u>                           |
|--|--|
| General Average.<br><i>Nelson v. Belmont,</i><br>5 Duer, 310, 823.<br><i>Lee v. Grinnell,</i> 5 Duer, 400.<br><i>Nimick v. Holmes,</i><br>25 Penn. State, 366.   | Not General Average.<br><i>Bordeaux.</i> |
| General Average.<br><i>Nelson v. Belmont,</i> 5 Duer, 310.<br><i>Lee v. Grinnell,</i> 5 Duer, 400.   | Not General Average.                     |
| General Average  | Not General Average.                     |
| Not General Average.   | Not General Average.                     |
| Not General Average.   | Not General Average.                     |
| It has been held that the right to contribution, strictly so called, does not extend beyond those who voluntarily embark in a common adventure; and that if A's vessel is about to come into collision with B's, which is at anchor, and B cuts his cable and thus avoids it, he has no claim for contribution against A for the loss of the cable and anchor. The <i>John Perkins</i> , U. S. C. C. Mass., 1857, 21 Law Reporter, 87, 89. |  |
| But, if the crew for the safety of their own ship and cargo, cut the cable of another ship, the loss ought to be made good by a General Average on the ship and cargo for the safety of which the damage was done.<br><i>2 Phillips</i> , 88.  |  |

Compensatory Charges.English Practi

incurred are not owing to some which may be econ parties concerned, b the transaction is either by selling the cargo or by break voyage. In such a frustrated expenses taken into account in equitable adjustmen the parties concern estimate, or *pro fi* ment, may give c to the one party upon marily the loss falls.

At Malta and at some the hire of warehouse is exorbitant in pric house room is difficul and it becomes an less expensive met charge cargo into co ers and keep it th general rule it costs ploy lighters for sto use warehouses on here the former cou visable. By not se cargo on shore a mu expense is avoided and reloading than the merchandise is on and taken out of the is customary theref justing, to divide th pense of lighter hir sider a portion of it lent to the increased of landing and reship might have been inc determined on; and charge to the cargo, sum representing rent only.

*Hop*

**COMPENSATORY CHARGES.**

**297**

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**American.**

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**French.**

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## GENERAL AVERAGE.

| <u>Expenses.</u>  | <u>English Practice.</u>                |
|---|---|
| (1) Disbursement absolutely paid for the common benefit when the ship is wrecked.                   | General average.                        |
| (2) Expenses as above raised upon bottomry and therefore contingent upon ultimate safety of vessel. | General Average if the bond is payable. |
| (3) — of delay at sea when a ship stays to refit.   | Not General Average.                    |

| American.   | French.  |
|---|--|
| ral Average whether lost or<br>lost afterwards.   | General Average  |
| se of funds to meet expendi-<br>es being raised merely by<br>pothection, the claim for con-<br>tribution for the expenditures<br>comes subject to the same<br>ditions as a claim for contri-<br>bution for jettison ; it depends<br>on the property being finally<br>saved.   | Same as English.   |
| reason for this practice is,<br>that the party whose property<br>has been hypothecated has lost<br>nothing, since the bond of hy-<br>pothecation has not been en-<br>closed. Another reason is, that<br>the lender in consideration of<br>marine interest, takes the<br>risk of the arrival of the prop-<br>erty to the amount lent, for<br>which all the parties concerned<br>agree to pay him a premium,<br>in case of the arrival of the<br>property, since, in that case,<br>they must contribute the amount<br>of the marine interest. But,<br>on these reasons, if a part of<br>the ship or goods hypothesized<br>is finally saved, and goes in part<br>to satisfaction of the bond, the<br>owner of what is saved would<br>be entitled to contribution for<br>the amount saved, and thus ap-<br>propriated towards the discharge<br>of the bond. |  |
| ral Average.<br>essel bound on a voyage from<br>Ierna to Boston met with sea-<br>nage, to repair which she took<br>board two carpenters from a<br>public ship, and delayed a few<br>days at sea to make repairs, in-  | As General. All the expenses in-<br>curred for delay from the day it<br>has been decided after deliber-<br>ation of the crew, the ship was<br>to go into a port of refuge up to<br>the day the ship commences her<br>repairs, and from the day she |

| <u>Expenses.</u>                                       | <u>English Practice.</u>   |
|--|--|
| (4) — of delay at the termination<br>of the adventure. | Not General Average.   |
| (5) — of delay when frozen up in<br>a port of refuge.  | Not General Average.<br>Mr. Arnould (p. 918) says :—<br>“Where a ship, for the general<br>safety, has put into a port of dis-<br>tress to repair, and while there<br>is frozen up for the winter, the<br>increased expense of wages and<br>provisions occasioned by this<br>delay, is allowed to be General<br>Average in America ; but it is<br>apprehended that it would only<br>be so considered in this country<br>when the loss, which the ship<br>went in to repair, was itself of |

| <u>American.</u>  | <u>French.</u>   |
|---|--|
| stead of putting into port for this purpose. The underwriters in Boston made no objection to paying the expenses of this delay.<br>Such a case is not at all distinguishable in principle from going off the course to seek a port of necessity.<br><i>2 Phillips, p. 103.</i>  | finishes her repairs up to the day she has come back to the same longitude and latitude, or about where the first deliberation took place.<br><i>Bordeaux.</i> |
| <b>A</b> ship being detained at Liverpool, her port of destination, after the cargo was delivered, to repair damage sustained before it was unloaded, Mr. Chief Justice Thompson, of New York, said: "The expenses during the time the vessel was detained at Liverpool cannot be brought into General Average. They were not incurred for the benefit of cargo or freight. The cargo had been delivered, and the freight earned, before the expenses in question were incurred."<br><i>Dunham v. Comm'l Ins. Co., 11 Johns, 315.</i> | See general answer to question (3).  |
| Delay by the vessel's being frozen up in the regular course of the voyage is not a case of General Average. But, if a vessel is frozen up in a port where the master put in voluntarily to repair, the expenses of detention during the time of her being frozen up are a part of the General Average.  | See general answer to question (3).  |

| <u>Expenses.</u>   | <u>English Practice.</u>   |
|--|--|
|  | the nature of General Average."  |
| (6) — in the ordinary course of the voyage.  | Not General Average.   |
| (7). — of quarantine on usual course of voyage whether of a usual or unusual length of time. | Not General Average.   |
| Goods or money paid as ransom to Pirates for the whole interest.                             | If a merchant vessel be captured by a <i>public enemy</i> it is not allowed, for national considerations, to ransom her; consequently a sum of money paid for the ransom of the whole co-adventure could not be recovered from the several parties as General Average in a court of law or equity. But the same consideration does not apply to a <i>pirate or private marauder</i> : and, therefore, money given to the captor by way of composition to effect the release of the vessel and cargo is properly claimable by General Contribution. |
| [8] — — to a public enemy.   | The Statute 45, Geo. 3d, prohibits ransom to an enemy; and under this statute it has been held that if a master ransoms his ship and brings her home, the owner may take her from him without repaying what he expended, nor would the owner be obliged to repay money which was borrowed for this purpose. <i>Parsons v. Scott</i> , 2 Taunt, 363. And the master would not be liable for the debt to the lender. <i>Webb v. Brooke</i> , 3 Taunt, 6.   |

| <u>American.</u>   | <u>French.</u>                           |
|--|--|
| Not General Average.   | Not General Average.                     |
| Not General Average.   | Not General Average.                     |
|  |  |
| If a ransom is made for the benefit<br>of all concerned, it is clearly a<br>case of General Average.   | General Average.<br><i>Rogron</i> , 400. |
| <i>Douglas v. Moody</i> ,<br>9 Mass., 548.<br><i>Sanson v. Ball</i> , 4 Dall., 459.  |  |
|  |  |
| Judge Phillips (§ 1336) says : " It<br>was formerly the practice to<br>ransom vessels captured by the<br>public enemy, and to give hos-<br>tages as a security for the pay-<br>ment of the ransom, in which<br>case the amount of the ransom,<br>as well as the expenses of the<br>hostage, during his detention,<br>were settled by General Contri-<br>bution. But more recently,<br>laws have been enacted prohib-<br>iting compositions with the pub-<br>lic enemy, and such composi-<br>tions have been considered ille-<br>gal, though not prohibited by<br>specific laws." For this last | Illegal.<br><i>Bordeaux</i> .            |

| <u>Expenses.</u>   | <u>English Practice.</u>   |
|--|--|
| [10] Expenses of delay and making claim for vessel and cargo in case of capture. | Although by English Custom the wages of the master and crew are not generally chargeable General Average, there is a case in which they are rightly admitted; and that is, where ship having been captured and detained in a foreign port, it is necessary for the master and some members of the crew remain with her for the purpose of making and substantiating claim for her restitution, together with the release of her cargo. But if the ship be only detained under an embargo, the wages are not allowed, and remain the owner's charge.<br><i>Hopkins,</i> |
| [11] Salvage in case of capture. General Average.                                |  |

American.

proposition no authority is cited by the learned author, and Judge Parsons, says he is inclined to doubt whether it be correct on principle or authority. This very able writer on Maritime Law (vol. 1, page 298) says: "We have no doubt, that a ransom paid in good faith, to any captor, whether piratical or belligerent, would be regarded in this country as an average loss."

## General Average.

- Speyer v. New York Ins. Co.*,  
3 Johns, 88.  
*Jumel v. Marine Ins. Co.*,  
7 Johns, 412.  
*Kingston v. Girard*,  
4 Dall, 274.  
*Dorr v. Union Ins. Co.*,  
8 Mass. R., 494.

The expense of the salvage allowed for recovering property captured is contributed for in general average, where different parties and interests are concerned, upon the principle on which that of claiming captured property is so entitled.

- Williams v. Suffolk Ins. Co.*,  
8 Sumner's R., 270 and 510.

- Heylyger v. N. Y. Firemen's  
Ins. Co.*, 11 Johns, 85.

French.

## General Average.

- Emerigon*, tom. 1, p. 631.  
*Code de Commerce*,  
1, 2, tit. 11, a. 211, n. 6.

## General Average.

Expenses.

[12] Salvage in other cases.

English Practice.

When the situation of a ship is dangerous in a high degree, and the fear of her loss is very great, the services of extraneous persons who rescue her from that peril, who drag her off rocks, disentangle her from surrounding sands or who save her from sinking, are regarded in a different light from mere *assistance* which is to be paid by the man, by the tide, or by the hour,—and they go under the name of *salvage*. When salvage services to a ship and her cargo are paid for in one sum, in accordance with a previous agreement or a subsequent compromise, by an award of referees, by the arbitration of magistrates or commissioners, or by the decision of the Admiralty Court, that amount is frequently allowed to form an item of the General Contribution, and is divided on the same values as the other common interests. But if special valuations of ship, goods, and freight were made by or for the arbitrators, Admiralty Court, &c., for the purpose of coming at a decision, it is the better plan to adhere to those valuations in dividing the salvage. And if the arbitrators, &c., specifically name a separate sum of salvage to be paid on each of the interests, those sums should in most cases remain undisturbed and separate in the adjustment.

*Hopkins, 44.*

American.

When a ship and cargo are saved together, as, by lightening the ship, carrying out anchors, &c., the total salvage is apportioned upon the ship and cargo, according to their respective values. But when the ship is wrecked and lost, the interests are thereby dissociated, in as much as the different articles of the cargo are likely to belong to different owners, each separate article of the cargo saved ought, as near as may be, to bear its own expense of saving, so that dry cotton belonging to one owner shall not pay for saving wet cotton belonging to another, nor silks pay for saving railroad iron. Articles, however, of the same kind, saved at the same time, by the same salvors, in a similar condition, may generally be charged with the same rate of salvage. So too, in such cases, the wharfage, storage, labor bills in landing and storing the goods saved, ought, as near as may be, to be charged to the separate articles saved, so that goods of great value and little bulk shall not be made to pay the expenses on goods more bulky and less valuable. Expenses of sale should be charged to the goods sold. In such cases, however, the notary's fee for noting and extending the master's protest, cost of documents useful to all the parties interested, and the costs of salvage suit, instituted by all the salvors conjoined, against all the property saved, are ordinarily rated as common charges and apportioned.

French.General Average.Bordeaux.

| <u>Expenses.</u>   | <u>English Practice.</u>   |
|--|--|
| <b>EXPENSES AT A PORT OF REFUGE.</b>   |  |
| [13] Inward Port Charges, such as towage, pilotage, lights, dockage, health fees, &c., &c., when a vessel is driven there by—<br>Damage to herself;<br>Sickness of crew;<br>Want of water or provisions;<br>Damage to or shifting of cargo;<br>Pumps choking;<br>Postages;<br>Notarial fees;<br>Adjustment fees;<br>Brokerage. | All General Average, when original cause of putting into port is unavoidable. But if the vessel only go into port in consequence of contrary and foul winds, her expenses are not considered General Average Charges, but merely expenses incidental to ordinary navigation, and for which the owner alone is responsible.   |
| [14] Commissions on advances for general average purposes.   | <b>General Average.</b><br>When a merchant or agent makes the disbursements he charges a commission for advance of funds. This is applied as a per centage to all the columns of disbursements. His travelling and other small expenses usually belong to General Average. The agent very commonly makes a charge for his trouble and attendance, his general supervision of the business, correspondence, &c., this is most frequently charged to General Average in one sum. |
| [15] Commissions collecting General Average.   | Not allowed.   |
| [16] Interest when charged on advances for General Average purposes.   | <b>General Average.</b>  |

American.French.

a ship puts into port in consequence of any disaster General Average.

See *Hand Book*, page 92.

l Average.

General Average.

l Average.

l Average.

General Average.

| <u>Expenses.</u>  | <u>English Practice.</u>   |
|---|--|
| <b>AT A PORT OF REFUGE.</b>                                   |  |
| Expenses discharging cargo and carrying to a point of safety. |  |
| [17] — to repair ship.  | If the vessel have sprung or have injured her bottom, and it becomes necessary in order to get at the part, to discharge the labor of discharging is Average. So are light boat hire with the goods ashore, cartage of the warehouse or other safety, the labor taken into the warehouse, the custom-house officers the discharge and war police or military guardage from the ship, tackles, planks, basket charging, &c. If the goods kept in the lighters instead of being landed, some allowance for the lighter hire is usually applied to General Average. It is considered that lighters instead of a vessel on shore is a more safe course, and on the account of the increased expense from the ship to the warehouse has been made an equitable compensation should be made by the Stater. |
|   | <i>Hodges</i>  |
| [18] — to cool, &c., cargo.                                   | General Average.   |
| [19] — because pumps are choked.                              | General Average.   |
| ed.   |  |
| [20] — to float a stranded ship.                              | General Average.   |

American.French.

General Average.

See *Hand Book*, page 92.

General Average if the repairs are  
the consequence of a voluntary  
sacrifice.

General Average.

General Average in some cases.

General Average.

General Average

General Average.

General Average.

| Expenses.   | English Practice.   |
|---|---|
| [21] — to restow when shifted by perils of the sea.                             | General Average.  |
| [22] — to enable a ship to enter a port of refuge.                              | General Average.  |
| [23] — to enable a vessel in the ordinary course to leave her port of loading.  | Not General Average.  |
| [24] — to enter her port of destination.  | Not General Average.  |
| [25] — to cross a bar or shoal in her ordinary track.                           | Not General Average.  |
| [26] — Bagging a cargo when it is in damaged bags.                              | Not General Average.  |
| [27] — when it is in bulk.  | General Average.  |
| [28] — Airing and cooling cargo.  | Not General Average.  |
| [29] — Expenses of coopering casks as far as rendered necessary by discharging. | Not General Average.  |
| [30] Pilotage, &c., &c., outwards.  | Freight.  |
| [31] Warehouse rent, &c., on cargo at a port of refuge.                         | Cargo.<br>The taking out of the cargo when it is necessary for the repair of the ship, is a subject of General Average ; and so is its carriage and delivery into a Warehouse or place of safety. But being there it remains at its own responsibility ; and the rent of the Warehouse, its insurance against fire, and any means taken to prevent it from being injured or to improve its condition when damp or damaged, are expenses chargeable <i>specifically to the cargo itself.</i> |

| American.        | French.                                 |
|------------------|---|
| Average.         | General Average.<br><i>Rogron, 400.</i> |
| Average.         | General Average.                        |
| General Average. | Not General Average.                    |
| General Average. | Not General Average.                    |
| General Average. | Not General Average.                    |
| General Average. | Not General Average.                    |
| General Average. | Not General Average.                    |
| Average.         | Not General Average.                    |
| Average.         | General Average.                        |
| Average.         | General Average.                        |

| <u>Expenses.</u>  | <u>English Practice.</u>   |
|---|--|
|   | The expenses of Survey on goods, carriage to a kiln to dry and back to the Warehouse, are of the same character. So are cases and bags, and the cooperage and other repairs of packages.   |
| (82) — when re-shipped by same vessel.  | Cargo.   |
| (83) — when not re-shipped.   | Cargo.   |
| (84) — when re-shipped by other vessel.   | Cargo.   |
| <b>RE-SHIPPING CARGO AT A PORT OF REFUGE.</b>                                   |  |
| (85) — when the cargo is re-shipped by same vessel.                             | Freight.<br>To the freight are charged the expense of conveying back the goods from the warehouse to the shipping place, the wharfage and quay dues, the lighterage on board, the labor reloading, stevadores restowing, weighing at reshipment, use of screws for cotton cargoes, pilotage out of harbor, boats and men assisting, steamers towing out, &c. |
| (86) — when it is discharged in consequence of an accident at a port of refuge. | Freight.   |
| (87) — when it is shipped by another vessel.                                    | Freight, unless the expense of reshipping it and the new freight exceed the original freight.  |
| [88] — Hire of lighters at a port of refuge to avoid landing cargo.             | If the cargo be kept in the lighters instead of being landed, some portion of the lighter-hire is usually applied to General Average.  |

| American.            | French.          |
|----------------------|------------------|
| General Average.     | General Average. |
| Hand Book, page 128. | General Average. |
| General Average.     | General Average. |

| <u>Expense.</u>   | <u>English Practice.</u>  |
|---|---|
| <b>WAGES OF MEN EMPLOYED TO PUMP.</b>                                   |   |
| [39] — when cargo is on board.  | General Average.  |
| [40] — when it is not.  | Not General Average.  |
| [41] Wages and provisions of crew during detention at a port of refuge. | Mr. Hopkins, page 52, says: "It is in the particular of wages and provisions for the ship's company during the time she is under average, that the English custom differs from the American and from nearly all foreign usage. As soon as a ship's head is diverted from her proper course for the purpose of going into a port of distress, and until she has regained her homeward direction after leaving port, the wages and provisions are by foreign practice chargeable in General Average. We reject this expense on the ground that an owner is bound by law to keep his vessel manned until she has completed her voyage, and that therefore he has not the option of dismissing the crew. All that can be said is that the protraction of the voyage is an unfortunate circumstance for the owner, but that he has not a remedy; that protraction may be equally unfortunate for the proprietors of the cargo, whose goods, if perishable, may be much depreciated by the delay; and they may lose their market from the same cause. Foreigners and some of our own col- |

| American.  | French.   |
|--|---|
| General Average.   | Not General Average.  |
| General Average, but applicable to vessel alone, according to practice in New York and Boston. See <i>Potter v. Ocean Ins. Co.</i> , 8 Sumner's Rep., 27; Philip's 2d Ed., § 1274. | Not General Average.  |
| General Average. See <i>Hand Book</i> , page 98.   | General Average if vessel is chartered by the month, not otherwise.   |
|  | <p style="text-align: right;"><i>Rogron</i>, 400.<br/> <i>Code de Commerce</i>,<br/>     art. 400, § 6.<br/> <i>Ordinance de la Marine</i>,<br/>     art. 7, Tit. des. av.</p>  |
|  | <p style="text-align: center;"><b>RULE IN SPAIN AS TO WAGES AND PROVISIONS.</b></p> <p>The 20th article of the 20th chapter of the <i>Ord de Bilbao</i>, proves, that in Spain the wages and maintenance of seamen, in case of repairs or other detention in port are not General Average. It enacts, that "when a captain, by storm, fear of an enemy, or any other unavoidable incident, is obliged to go into a port, and to make some stay there for the purpose of refitting, or for his security, and not being able to procure the necessary money on credit, or upon bottomry, he should be obliged to sell merchandise at a less, the damage, on being proved to have been incurred really for the general benefit, is to be placed to General Average, after deducting that which has been applied to</p> |

| <u>Expenses.</u>  | <u>English Practice.</u>  |
|---|---|
| [42] — during detention for the purpose of prosecuting the voyage on a decree of release. | onists do not see the subject in the same light, however, and claim the wages and victuals in their adjustments. Many of our insurance clubs have followed their example and permit by their rules the wages of ships under detention to be allowed in the average, and they even arrange a scale <i>per diem</i> to remunerate the owner whose ship is detained. Although a vessel be unfortunately detained in some port all the winter, ice bound, the owner has no remedy against his underwriters, and still less claim for contribution from the co-adventurers, since there is no voluntary sacrifice on his part, but an inevitable necessity. The only question that can arise in the case is, whether this position is altered by a ship being ice-bound in a port where she has been obliged to put in by circumstances which make her expenses going there General Average. The answer is in the negative; for neither by our law or custom does detention, with the one or two exceptions I have mentioned, give any claim by which the owner can shift his burden on to others. The exception which Mr. Benecke proposes seems to me a distinction without a difference." |

American.French.

the purchase of provisions, payment of wages and other requisites for the vessel, all which are to be held particular average at the charge of the captain."

Though such is the law, the practice is now becoming general, to allow in General Average, Wages and Provisions, to all places on the continent excepting Great Britain and France, and some few ports where the usage is known to be contrary. If a vessel is bound from a port in the Spanish West Indies or Spanish Main, and the loss is adjusted at the port of departure, Wages and Provisions are generally admitted in the adjustment as a common charge.

he crew are detained during  
delay to claim a captured ship  
and cargo, for the purpose of  
prosecuting the voyage on a de-  
ree of release, the expense of  
their wages and provisions dur-

## Shipowner.

| <u>Expense.</u>   | <u>English Practice.</u>  |
|---|---|
| [43] — of crew when they are discharged as seamen and hired as laborers.  | Shipowner.  |
| [44] — of men hired to watch or guard property.   | Property concerned.   |
| [45] — of laborers hired in the place of seamen.  | Shipowner.  |
| (46) — of men employed to promote the prosecution of the voyage otherwise than in repairs belonging to General Average. |   |
| (47) Extra wages to men to supply the places of deserters at a port of refuge.  | Shipowner.  |
| (48) Gratuities promised in time of danger to seamen.   | The ordinary crew of a ship not to be paid an additional sum for their extraordinary exertions, because it is their bounden duty to give their utmost efforts for the preservation of the ship and the prosecution of the voyage. |

| <u>American.</u>  | <u>French.</u>       |
|---|----------------------|
| ing such detention is to be contributed for.<br>The contribution in this case seems to rest upon the same grounds as in case of delay, and seeking a port of necessity, to refit.   |                      |
| General Average.  | Shipowner.           |
| General Average.  | General Average.     |
| Shipowner.  | Shipowner.           |
| General Average.  | Not General Average. |
| Not General Average.<br><i>2d Phillips</i> ; p. 25.<br><i>Hughes on Ins.</i> , p. 292.  | Shipowner.           |
| As a general rule gratuities to sailors, paid or promised, to increase their exertions during peril, do not constitute an average loss.<br>There are a few exceptional cases, however, where the judgment of the Adjuster must decide whether the circumstances bear out some additional payment to the crew:—as, for instance, when a ship in a disabled condition puts into a port where leaks cannot be stopped, or where repairs cannot be effected without very heavy expenses, and it becomes highly desirable to reach, if possible, the place of destination, yet the Consul is | Shipowner.           |

| <u>Expenses.</u>  | <u>English Practice.</u>  |
|---|---|
| (49) Permanent repairs to a ship at a port of refuge, except of damages voluntarily incurred. | Not General Average.  |
| (50) Temporary do. do.  | Not General Average except under certain circumstances—for example, when the alternative would be, incurring other expenses which would be General Average. |

American.

inion that the ship's company cannot be forced to go to gain in the vessel's then position;—in such a case, if offer of additional pay, and allowance of additional provisions prevail with the crew to proceed on the voyage, and to double their exertions, the reason of such an arrangement will not justify the proceedings, the parties interested would surely object to a payment retrospective of so much advantage to themselves, and only questionable on more theoretical considerations.

writers on ship.  
permanent repairs of damage to ship are brought into the General Average only in case of being incurred voluntarily.

Practice with reference to repairs, both permanent and temporary, is, in New York and elsewhere, as follows:

Repairs are made to a vessel by reason of a voluntary sacrifice or sacrifice, incurred for general preservation, they to be contributed for by the persons benefited—less from permanent repairs, the usual proportion of one-third new for

by reason of accidental damage, the materials of the vessel are applied to extraordinary use, they are also to be contributed for, subject to simple deductions.

by reason of accidental damage, say stranded on a beach, or at from a port where repairs

French.

Not General Average.

Not General Average.

## GENERAL AVERAGE.

| <u>Expenses.</u>  | <u>English Practice.</u>                                    |
|---|---|
|   |   |
| (51) Diving under and examining<br>ship's bottom, to avoid ne-<br>cessity of discharging cargo. | Underwriters on passage mem<br>with usual clause of policy. |

American.

could be made, materials are purchased to enable the voyage to be prosecuted, and preserve all the interests from imminent danger of destruction, for example—canvass coverings, tarred paper, planks for sheathing on the bottom, &c., all for temporary stoppage of the leak, they are to be contributed for net, without the deduction.

When a vessel is in a port where repairs can be made, the owners are bound to make them at their own expense. Repairs only temporary in their character, can be claimed from the Underwriters on the vessel, without the usual deduction of one-third; other repairs as agreed upon in the contract of insurance.

Temporary repairs made at a port of refuge, to avoid the expense of complete repairs, which would greatly exceed those at the home port, being of no benefit to the cargo, are charged to *Partial Loss nett*. But if any benefit still results to the ship from the repair, it is subject to a deduction of one-third, like other repairs.

If sails which have never been set, or, uncoiled ropes be destroyed for repairs, the ship owner has a right to claim for their value without a deduction of one-third new for old.

General Average.French.

Underwriters on passage money.      General Average.

| <u>Expenses.</u>  | <u>English Practice.</u>  |
|---|---|
| (53) Bottomry premium on expenses incurred at a port of refuge.                         | Not General Average, except on that portion of expenses allowed in General Average. |
| (54) Insurance on expenses incurred at a port of refuge.                                | Not General Average except as above.  |
| (55) Landing cargo when a vessel is wrecked or properly condemned at a port of refuge.  | General Average.  |
| (56) Landing specie when a vessel is wrecked or properly condemned at a port of refuge. | Charged to Underwriters on specie only which do not pay for landing rest of cargo.  |

| <u>American.</u>   | <u>French.</u>   |
|--|------------------|
| Charged to Cost of Funds, and apportioned pro rata among the several interests for whom expenses were incurred.  | Same as English. |
| The same as bottomry premium as above.   | Same as English. |
| The liability to General Average continues until the interests have become completely separated, and there is no longer any community of interest remaining.   | General Average. |
| If the enterprise is not abandoned, and the property is still under the control of the master of the vessel, and liable to be again taken on board for the purpose of prosecuting the voyage, the common interest remains, and whatever is done for its protection, is done at the common expense.   |                  |
| In <i>Nelson v. Belmont</i> , 5 Duer, 310, the cargo of a vessel being on fire, the master transferred a quantity of specie to another ship, which, by his request, conveyed him into a port of distress. He there incurred expenses in putting out the fire and repairing damages to the vessel, the specie being meantime deposited in bank. The damage was found to be such that the cargo was sold and the voyage abandoned. Held, that the specie was liable in General Average for the expenses at the port of distress. | General Average. |

| Expenses.   | English Pract.        |
|---|-----------------------|
| <b>LANDING SHIP'S STORES IN<br/>CASE OF WRECK.</b>  |                       |
| [57] — when landed before cargo<br><i>in order</i> to facilitate dis-<br>charge of cargo. | General Average.      |
| [58] — do. do. without reference to discharge of<br>cargo.                                | Underwriters on ship. |
| [59] — when cargo and ship's stores are landed together.                                  | General Average.      |
| [60] Interest actually paid by the party advancing the money.                             | Allowable in General  |
| [61] — not so paid but charged by him.  |                       |

**COMMISSION ON ADVANCES.**

- [62] — in port of ownership. Not allowed.

**EXPENSES.****820**

| <u>American.</u>   | <u>French.</u>   |
|--|--|
| verage.  | General Average.   |
| <i>ie's materials landed to pairs or for their safety.</i>   | Not General Average.   |
| verage.  | General Average.   |
| o Cost of Funds. See B.  | General Average.   |
| party advances money enes that are General , there is no doubt that, he himself pays inter- noney advanced by him, ntitled to bring it into age. But in what cases advancing money for s of General Average, he does not pay inter- charge interest, is not settled. | sual mode of adjustment York, Boston and Phil- , to allow interest on advanced for General purposes. |
| ision on advances for Average purposes, is by llowed. But the owner intitled to charge in <i>Par- Average</i> , a commission isbursements, or a com- n for his own services intending and managing   | Not General Average.   |

| <u>Expenses.</u>  | <u>English Practice.</u>  |
|---|---|
| [63] — — loading, when ship has put back.               | Allowed, if foreign port.   |
| [64] — in intermediate port.                            | When a merchant or agent makes the disbursements he charges a commission for advance of funds. This is applied as a percentage to all the columns of disbursements. His travelling and other small expenses usually belong to General Average. The agent commonly makes a charge for his trouble and attendance, his general supervision of the business, correspondence, &c., this is most frequently charged to General Average in one sum. |
| [65] — — port of destination.                           | Allowed, if foreign port.   |
| AGENCY CHARGES.   |   |
| [66] — in port of ownership.                            | Not allowed.  |
| [67] — in foreign port of loading, when ship puts back. | See answer to question 64.  |
| [68] — — intermediate port.                             |   |
| [69] — — port of destination.                           |   |
| [70] — per centage on value of cargo landed.            |   |



| <u>Expenses.</u> | <u>English Practice.</u> |
|------------------|--------------------------|
|                  |                          |

American.

sion. The master has no authority to agree to pay an unreasonable commission. The Chamber of Commerce of the City of New York have recommended to be charged by the consignee, in the absence of any agreement to the contrary, a commission of two and a half per cent. on the *value* of the *invoice*, for landing and reshipping goods from vessels in distress. Whatever weight this recommendation may have as evidence of what is a reasonable charge to be made for such services when rendered in that city, it has no weight whatever as applied to the like services when rendered in other places. The law-merchant has fixed no particular rate of compensation for such services, but it allows a *quantum meruit*, determined in each case by its own facts. It is not competent for any Chamber of Commerce or any State Legislature to introduce into the commercial code any alterations or new provisions, which shall affect the interests of non-residents; and, I think, that a general practice of allowing to the master's consignee a commission on the value of the *invoice* of a cargo for landing and reshipping it, is not the wisest mode of determining his compensation, in many ports of the world. In *Mason v. The Jackson Ins. Co.*, tried in the Superior Court of the City of New York, a few years since, in which the average statement showed that the master's consignee, at New Orleans, had charged \$2,400.87,

French.

| <u>Expenses.</u>                             | <u>English Practice.</u>   |
|--|--|
| [71] EXPENSES GETTING A SHIP OFF THE GROUND. | See page 246, answer to question<br>"Expenses incurred to float a<br>stranded ship." |

American.

being two and a half per cent., commission on the value of the cargo, for landing and reshipping it, the ship being in distress, the jury found a sealed verdict, in which they said they did not hesitate to pronounce the commission charged, "a most exorbitant and unreasonable charge."

The expense of discharging the cargo to get a vessel afloat that has been accidentally stranded, and that of re-loading the cargo, and the other expenses requisite to enable the vessel to proceed on the voyage, except those of making repairs, are in practice brought into General Average, where the vessel, after being got off, proceeds with the same cargo.

loss or damage happens to the anchors, chains, hawsers or other parts of the ship, in consequence of efforts made to get a stranded ship afloat with the cargo or a part thereof in, or with a view to the common benefit, such loss or damage, if the ship is again set afloat, should be apportioned upon ship and cargo. But if the ship is not again set afloat, the loss or damage should rest where it falls.

the ship being actually lost, the blocks, falls, ropes or other parts of the ship are lost or damaged in getting out the cargo, such loss or damage, estimated with reference to the actual value of the articles as detached materials, ought to be made good to the ship by the cargo saved.

French.

Getting a ship off the ground is General Average.

*Rogron, 400.*

| <u>Expenses.</u> | <u>English Practice.</u> |
|------------------|--------------------------|
|                  |                          |

| <u>American.</u>   | <u>French.</u> |
|--|----------------|
| If goods, put into a wrecking vessel to lighten the ship off the reef, are lost or damaged, the ship, if got off, should contribute to the loss or damage.   |                |
| If lost or damaged by the fault of the wrecking vessel, the wrecker should make good the loss or damage, though his liability, without payment, will not exonerate the ship from its contributive share.   |                |
| Where a vessel is stranded during a voyage, and thereby the vessel, cargo, and freight are exposed to a common peril, and expenses are voluntarily incurred to relieve the vessel, cargo, and freight therefrom, with a view to complete the adventure in which they are engaged; and by one continuous operation all the subjects are relieved from the common peril, and the common adventure is completed by the arrival of the vessel and cargo at the port of destination, whereby freight is earned; the expenses so incurred for the benefit of all interests, are strictly and purely General Average charges. |                |
| <i>Moran v. Jones</i> , 7 El. and Bl., 523; <i>Bevan v. Bank of United States</i> , 4 Whart., 301; <i>Heyliger v. New York Firemen Ins. Co.</i> , 11 Johns, 85; <i>Williams v. Suffolk Ins. Co.</i> , 3 Sumner, 510; <i>Ellicott &amp; Others v. Alliance Ins. Co.</i> , 14 Grays, R 818.  |                |
| Goods being landed from a strandship, and delivered to the consignee, do not cease to be liable for contribution to expenses sub-  |                |

| <u>Expenses.</u>   | <u>English Practice.</u>                                  |
|--|---|
| <b>EXPENSES WHEN THE VESSEL<br/>IS STRANDED AT A DISTANCE<br/>FROM HER DESTINATION.</b>        |   |
| [72] — when the value of the ship is improved, and the ship and cargo are afterwards reunited. | See page 280  |
| [73] — do. do. and they are not reunited.  | Underwriters on ship.                                     |
| [74] — when the vessel is not improved by heaving off.   | See page 280  |
| [75] Expenses when the vessel is wrecked or stranded close to her port of destination.         | Underwriters on ship.                                     |
| [76] Expense of forwarding wrecked cargo by another ship.                                      | Freight.  |
| [77] Expense of shipping an anchor and chain after a chain has parted.                         | General Average, less usual expense, if necessity urgent. |

| American.   | French.              |
|---|----------------------|
| sequently occasioned, where it can fairly, or even by a liberal construction, be considered that all were involved in a common peril, and all were saved at different times and in different ways, by efforts or expenses which consisted indeed of separable parts, but of which the parts were so connected as to form a whole. <i>Bevan v. Bank of United States</i> , 4 Whart., 801. See also <i>Nelson v. Belmont</i> , 5 Duer, 810. |                      |
| Disputed.   | General Average.     |
| Not General Average.<br>4 Whart., 301.  | Not General Average. |
| General Average.<br><i>Potter v. Ocean Ins. Co.</i> , 3 Sumner's Reps., 27, and see <i>Phillips on Ins.</i> , 2d. Ed., sec. 1412.   | Not General Average. |
| Freight to extent of original contract. Extra freight to cargo, and apportioned according to bulk.<br>See <i>Hand Book</i> , page 128.  | Not General Average. |
| Same as English.  | Same as English.     |

## GENERAL AVERAGE.

|      | <u>Expenses.</u>   | <u>English Practice.</u>   |
|------|--|--|
| [78] | Cost of an unsuitable anchor and chain supplied under such circumstances when no suitable anchor and chain are procurable there, or it forms no part of the master's duty to get them there. | General Average less proceeds.   |
| (79) | Hire of an unsuitable anchor and chain under such circumstances.   | General Average.   |
| (80) | Hire of an anchor and chain under such circumstances to avoid purchasing an anchor and chain.  | Not General Average.   |
| (81) | Hire of anchors, cables and boats for temporary purposes.  |  |
| (82) | Expense of freeing master when arrested for his own or owner's debts.  | Not General Average.<br><i>Dobson v. Wilson,</i><br>3 Camp., 4 $\frac{1}{2}$ |
| (83) | Expenses followed by total loss.   | Allowable as if followed by <del>safety</del> loss.                          |

| <u>American.</u>   | <u>French.</u>       |
|--|----------------------|
| Same as English.   | General Average.     |
| General Average.   | General Average.     |
| Not General Average.   | Not General Average. |
| General Average.   | Not General Average. |
| Where the master is arrested in the course of the voyage for a debt due from himself and his owners, but not the subject of contribution in General Average on the pending voyage, and the goods of a shipper are sold to raise funds to pay the debt and discharge the master from arrest, the interest of the other shippers in the discharge of the master is not such as to subject them to contribution for the goods so sold. The remedy is against the master and owners. |                      |
| A distinction is observed between a jettison and expenses incurred for the general concern. Contribution for jettison is made only in case something is finally saved; but <i>actual expenditures</i> in making a port to refit, or claiming captured property, or in repairing damages done to the  |                      |
| Not General Average.   |                      |

## GENERAL AVERAGE.

| <u>Expenses.</u>                                   | <u>English Practice.</u>   |
|--|--|
| What Interests should Contribute and their Values. | <p>The value of the ship for contribution is her value at the time of her arrival at the termination of the voyage; but if she have met with damage and have been repaired before arriving at her port of destination, the value to be taken is her worth previous to such repair.</p> <p>Where parts of the ship have been sacrificed for the general benefit, and the cost of them is made good in the Average Contribution, the amount of such <i>bontification</i> is to be added to the value of the ship, upon the same ground that the value of goods jettisoned must be made to contribute to the jettison itself.</p> |
| (1) Ship—  |  |
| (2) Cargo.   | <p>The value of the cargo is what it has produced, or would produce, at, as nearly as possible, the time of its arrival. If it be actually sold there can be no truer value given for contribution than the net proceeds of the sale:—that is, the gross amount stripped of freight, duty, landing and all other charges, and brokerage. The only charge</p>   |

American.

ship for the general safety, are to be contributed for in General Average, though both the ship and cargo are subsequently lost, and nothing of either finally comes to the use of the owner. This rule does not of course apply where funds for these expenditures have been obtained by loan on bottomry.

French.

The true value of the ship for contribution, is the amount that her hull, masts, yards, sails, rigging and stores would produce after the sacrifice is made, with the addition of the amount made good by the general average contribution.

In case of voluntary stranding, the measure of loss is not the value at the commencement of the risk, as in case of total loss under a policy upon the ship, but the value at the time when the ship is run aground. The inquiry therefore, will be, what the ship would have been worth to the owner at that particular time, if he could have had it in security, free from any impending peril.

When the average is adjusted at the port of discharge, the practice is, to take the actual value of the cargo at the market price, stripped of all the charges attached to it, as freight, duty and landing charges. And if a jettison has taken place, then the estimated proceeds of the goods jettisoned, taken in like manner, should be added to the net.

Half value as per policy of insurance.

*Court of Bordeaux.*  
As ascertained at port where General Average is made up. *Court of Caen.*

*Rogron*, 401, 417.  
Generally one-half of appraised value.

Contributes on its real value at port of discharge.

*Rogron*, 402, 418.  
Cargo for which there is no Bill of Lading or declaration of captain contributes but is not paid for and ought to be jettisoned first.

*Rogron*, 420.

Contributory Interests.English Practice.

which should not be deducted either from a contributing value or from a value of goods jettisoned is the merchant's own commission ; because that, which is his expected profit, was jeopardized when the goods themselves were in danger ; consequently he was benefited *quod* the commission by the means which form the General Average.

If the goods be not sold, an estimate must be formed of their value, and they must be treated in the same manner as if they had been really sold. This is called a *pro forma*, or simulated, account sale.

Mr. Hopkins remarks : " In every case it is strongly to be borne in mind that it is *real* and not *fictitious* values which are to be adopted, and that the value given in for contribution is not to be affected by any value assumed in a policy of insurance. Some persons from ignorance, and some designedly, give a value for contribution which is just within the policy value, so that all the General Average they are themselves called upon to pay may be recovered from their underwriters. I need hardly point out that when this is the intention of the assured in giving in a smaller than its real value the act is simply dishonest ; it is forcing on the other contributors a proportion larger than what is due by them."

The value of goods jettisoned is to be added to the value of what arrives ; but to prevent mistake in the adjustment, it is better

American.

ie of the cargo saved. The  
is must contribute, accord-  
to their value, in the state  
which they arrive at that  
e. The same rule is to be  
owed under similar circum-  
ces for disbursements, if  
goods arrive in a sound  
e, or if they were diminished  
value by internal decay, or  
rnal damage, previous to  
period at which the dis-  
bursements were made. But, if  
aged goods are sold at the  
mediate place to prevent  
r further destruction, the  
amount for which they were  
at that place, after deduct-  
their special charges, will  
he sum for which they must  
tribute to General Average.

French.

| <u>Contributory Interests.</u>               | <u>English Practice.</u>   |
|--|--|
|  | to show the distinction between the two.                                     |
| (3) Provisions for passengers and emigrants. | If for consumption, do not contribute.                                       |
|  |  |
| (4) Animals to a market.                     | Contribute.  |
| (5) Passengers' effects.                     | Passengers' personal effects and money do not contribute to General Average. |
| (6) Passage money.                           | Contributes if at risk.  |

| <u>American.</u>  | <u>French.</u>   |
|---|--|
| Provisions, unless they form a part of the cargo, are put on board for consumption, and are exempt from contribution.   | Provisions do not contribute.<br><i>Rogron</i> , 419.<br><i>Emerigon</i> , ch. xii., sec. xlvi., <i>Meredith's Ed.</i> , p. 498. |
| In <i>Brown v. Stapleton</i> , 4 Bing, 119, a claim was made by the owner of a merchant ship for contribution by provisions, which were shipped by the English government for the support of convicts, who were being transported. It was held that the claim could not be maintained, on the ground that provisions for the crew and passengers were not liable to contribute in any case. Mr. Phillips, in his Treatise on Ins., vol. 2, § 1890, doubts the correctness of this decision. He says there is a plain distinction between a case where provisions are supplied by the ship-owner for the crew or for the passengers, and one where they are furnished by a shipper, to be consumed by passengers, or animals transported for him. Because, in the former case the value of the provisions reappears in the freight, and by this, contribution is made. |  |
| Contribute.   | Contribute.  |
| Do not contribute.  | Do not contribute.   |
| Passage money contributes to General Average if at risk. It is generally prepaid, and if no express agreement to the contra-  | Same as English.   |

| <u>Contributory Interests.</u> | <u>English Practice.</u>   |
|--------------------------------|--|
| (7) Crew's wages.              | Do not contribute.   |
| (8) Crew's effects.            | Do not contribute.   |
| (9) Munitions of war.          |  |
| (10) Government property.      | Government stores contribute, like other goods; but in general on cost price, as they are not shipped for profit.<br><i>Brown v. Stapleton,</i><br>4 Bing, 119.<br>It was formerly not the custom, <i>Magens</i> says, vol. 1, page 172: "It is not customary for the King's goods to contribute to any Average, nor are such goods or any part thereof, that may happen to be thrown over board, paid for." This was a case of average which occurred in the year 1748. |
| (11) Profits on cargo.         | Contribute, included in value of cargo.  |

| American.  | French.              |
|--|----------------------|
| ust be refunded. If not refunded, it is at risk, and contribute. In general law in relation to passage y is the same as that re-<br>ing freight.<br><i>cott on Shipp.</i> , 378 Note.  |                      |
| Ibid, 405 "  |                      |
| Ibid, 503 "  |                      |
| contribute.  | Do not contribute.   |
| contribute.  | Do not contribute.   |
|  | Do not contribute.   |
| ates.<br><i>ited States v. Wilder,</i><br>3 Sumner, 308.   | <i>Rogron</i> , 419. |
| do not contribute under same name. It is obvious, how-<br>that when the contribu-<br>value of the goods, is their<br>at the port of destination,<br>heir value as enhanced by<br>ransportation, and there-<br>he profits are included in | Same as English      |
| he <i>Nathaniel Hooper,</i><br>3 Sumner, 542.  |                      |

**GENERAL AVERAGE.**

| <u>Contributory Interests.</u>                       | <u>English Practice.</u>   |
|--|--|
| (14) On ships chartered out and home by one charter. | If a ship is chartered out and home, in one charter, and she meets with a General Average on the outward voyage, the whole freight for the round must contribute. If the Average happens on the homeward voyage, then only the freight at risk at the time is to pay its contribution. |

American.

butes and receives, if the vessel be totally lost.

*Col. Ins. Co. v. Ashby,*

18 Curtis, 176.

As to the practice which prevails in most of the ports of the United States, for ascertaining contributory value of freight, see *Hand Book*, page 149.

Charter parties are generally worded, so much to be considered earned upon the delivery of the *outward* cargo, and the balance on the delivery of the *homeward* cargo. If no agreement or division of the charter is thus made in the written instrument, it is the custom of Adjusters in *New York* to estimate the amount at risk at the time, and which is usually computed to be, one-half on each passage.

The authorities on this point are diverse and conflicting. In the case of *Shelton v. Brig Mary*, U. S. D. C. Mass., 5 Law Reporter, 75. It was decided, that if there is a charter party, and freight is to be paid for the round voyage out and home, and the principal object of the voyage is to obtain a return cargo, if a loss occurs on the outward voyage, the freight for the round voyage contributes.

In the case of *Williams v. The London Ins. Co.*, 1 Maule & Selw., 318, it was held that the whole freight for a voyage to India, and back to London, should contribute towards an average which occurred on the outward voyage. This result was reached through the medium of a charter party, by which no

French.

As per arbitration for the value of freight.

*Bordetuz.*

| <u>Contributory Interests.</u> | <u>English Practice.</u> |
|--------------------------------|--------------------------|
|                                |                          |

American.

freight was payable until the voyage was completed, and the Court attached much importance to the fact, that the whole voyage was performed. Whether the outward cargo was held to contribute does not appear in the report of the case.

Mr. *Hughes* says, in his Treatise, 298 : " If the ship be chartered for a voyage out and home, and meet with an accident on the outward passage which gives rise to an Average claim, the whole freight when afterwards received under the charter party, for the outward and homeward voyages, must contribute to the loss."

These decisions, and this dictio-  
n proceed on the ground that it is  
competent to disregard the ac-  
tual freight on board at the time  
an average loss occurs, and to  
consider future earnings to be  
freight pending if there be a  
written contract therefor. Mr.  
*Arnould* does not approve the  
decision in *Williams v. The London Ins. Co.*, and doubts  
whether it can be supported on  
principle. 2d *Arnould*, 938,  
and he says, page 937 : " That  
freight in order to be contribu-  
tory at all, must have been pend-  
ing at the time of the sacrifice."

Mr. *Benecke*, after citing the *Wil-*  
*liams* case, dissents from it, and  
says, that in his opinion the  
freight in such cases ought to  
be divided, and Mr. *Phillips*, in  
a note, intimates that in his  
judgment only the freight of the  
particular passage should con-  
tribute. *Stevens & Benecke*, by  
*Phillips*, 258. Judge *Phillips*,

French.

**GENERAL AVERAGE.**

| <u>Contributory Interests.</u>       | <u>English Practice.</u>  |
|--------------------------------------|---|
| (15) Advances on account of freight. | Contribute.<br>It has been commonly maintained, hitherto, that advances of money made to a captain on account of freight are not to contribute to General Average. But in the recent case of <i>Hall v. Jameson</i> , in the Court of Queen's Bench, it was held that a custom alleged to exist in London that assurers of money advanced on freight were not liable to make good a General Average loss, was no answer to the action. What the nature of an advance to the captain before the ship's sailing is, depends almost entirely on the manner of making it. If it is simply an advance for expenses, it is not an insurable interest in the eye of the law, but is a personal debt of |

American.

the last edition of his treat-  
, chap. 15, sec. 11, states the  
e as follows: "The freight  
ding at the time of the jetti-  
or other sacrifice contributes  
the loss on the amount ac-  
lly saved."

In a case of *Spofford v. Dodge*,  
Mass., 66, it was held that  
ach party should contribute  
ording to the real value and  
ount of his interest without  
ard to the particular contracts  
iting to the voyage." The  
sel in this case, was under-  
rter on time, and the freight  
less than the charter money,  
the Court confined the con-  
dition to the freight, on the  
ress ground, that the differ-  
e arose from a special con-  
it which could not affect the  
ult.

French.

ted.

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**Contributory Interests.****English Practice.**

the owner not dependent on the safety of the ship (and see Arnould, p. 261.) If, however, it be clearly stated to be advanced as *part of the freight*, it is insurable as such; for in case the ship be lost, that freight paid in advance is lost also, for it would not be returned by the ship-owner. In fact it might be put in the light of the person so advancing having purchased a share of the freight; and therefore the owner has no right to insure the portion advanced,—*for the same interest in all its rights* cannot be insured twice.

Mr. Hopkins, page 83, says: "The current opinion about this subject at Lloyd's appears to be just contrary to the fact, for it is commonly stated that advances, *eo nomine*, are an insurable interest, *but that money advanced on account of freight is not insurable* by the merchant or his agent; in conformity to which opinion advances are very usually insured in London and elsewhere. But the truth is discoverable by deciding the question, Whose is really the risk of loss by sea perils on these advances? On whomsoever that contingency rests there remains also the right to provide against it by insurance; in other words, he has an insurable interest. Moreover if that interest be such as to be subjected to danger of loss, it is interested in any means taken to avoid such loss,—it must contribute to General Average."

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American.French.

| <u>Contributory Interests.</u>  | <u>English Practice.</u>  |
|---|---|
| [15] Freight when the goods are transhipped by another vessel.                | The excess of original freight over transhipping freight and extra charges consequent.                |
| [16] — payable "lost or not lost."  | Becomes thereby part of the value of cargo which contributes accordingly.                             |
| [17] Specie in ordinary cases.<br><br>When there is a Second General Average. | Contributes at its full value.  |
| [18] Ship for first General Average.  | In theory, value at time of first General Average. In practice her value at termination of adventure. |
| [19] — for second General Average.  | Value at termination of voyage.   |
| <b>FREIGHT FOR FIRST GENERAL AVERAGE.</b>                                     |   |
| [20] — when result of expenses.   | Follows same rule as ship.  |
| [21] — do. loss or damage.  | Follows same rule as ship.  |
| [22] — for second General Average.  | Only contributes on such freight as is on board at the time of the accident.                          |
| [23] — on goods re-laden on first occasion.                                   | Contributes to both.  |
| [24] — do. do. not re-laden on first occasion.                                | Contributes only to first General Average.  |
| <b>CARGO FOR FIRST GENERAL AVERAGE.</b>                                       |   |
| [25] when result of expenses.   | Same rule as ship.  |
| [26] when result of loss or damage.   | Same rule as ship.  |

| <u>American.</u>  | <u>French.</u>                           |
|---|--|
| If of freight earned, which<br>would be the original freight<br>less the cost of transhipping<br>o. | The freight as estimated by arbitration. |
| at risk does not contribute<br>freight.   |  |
| butes at its full value.  | As English, at its full value.           |
| is English.   | Same as English.<br><i>Bordeaux.</i>     |
| is English.   | Same as English.<br><i>Bordeaux.</i>     |
| If of freight at risk.  | Same as English.                         |
| If of freight at risk.  | Same as English.                         |
| If of freight at risk.  | Same as English.                         |
| risk on both occasions, con-<br>tinges to both.   | Same as English.                         |
| risk does not contribute.   | Same as English.                         |
| at port of destination.   | Same as English.                         |
| finally saved at port of des-<br>tination.  | Same as English.                         |

## GENERAL AVERAGE.

| <u>Contributory Interests.</u>                     | <u>English Practice.</u>  |
|--|---|
| — for second General Average.                      |   |
| [27] — if on board when it takes place.            | Contributes.  |
| [28] — if not.                                     | Does not contribute.  |
| [29] Property recovered after Jettison.            | Goods jettisoned still belong to their former owners, and if recovered from the sea, may be reclaimed by them on paying the expenses of salvage.  |
| [30] Property sacrificed on first General Average. | Contributes to all subsequent General Average.  |
| [31] Cargo on deck.                                | Contributes.<br>And in practice when carried according to usage and custom of trade, is also contributed for; but general contribution not binding on the Underwriter, unless his consent to risk of deck cargo has been specially obtained.<br>Mr. Arnould, p. 888, says : " But the most important exception ( <i>i. e.</i> , to contribution), is that of goods <i>carried on deck</i> , which, as they tend to embarrass the navigation, are not contributed for, if jettisoned, unless they are so carried according to the common usage and course of trade on the voyage for which they are shipped. On proof, however, of such usage, they are contributed for, if jettisoned, like other goods ; and no notice |

| <u>American.</u>   | <u>French.</u>   |
|--|--|
| Contributes  | Same as English.   |
| Does not contribute.   | Same as English.   |
| If goods are jettisoned, and afterwards recovered, not their whole value, but only so much thereof as is lost by the jettison and damage thence arising, added to the expense of recovering them, is to be contributed for.  | The Ordinance, art. 22, tit. <i>Dujet</i> , says: "If the effects jettisoned are recovered by the owners after contribution, they shall be bound to return to the master and those interested, what they have received in the contribution, less the damage still remaining to them from the jettison and the expenses of the recovery." |
| Contributes to subsequent General Average.   | Does not contribute to further General Average.<br><i>Rogron</i> , 425.  |
| Deck-load, though not contributed for in General Average when sacrificed, must contribute for the sacrifice in addition to its own special expenses or charges. Deck-load is usually at its own risk, and must pay its own charges; these are called special charges, and must be deducted from the net value before contributing to the General Average.        | Do not contribute unless for coasting voyages.<br><i>Custom of Bordeaux</i>  |
| It is a general rule that cargo carried on deck, if jettisoned is not contributed for in General Average, because it is assumed to embarrass the navigation of the vessel, and the property itself is peculiarly exposed to hazard. Modern authorities, however, have admitted exceptions to the rule, and have held that goods thus stowed according to the es- | <i>Code de Commerce</i> , art. 421, provides: "The effects laden on deck of the vessel contribute, if saved. If they be thrown overboard or damaged by the jettison, the owner is not admitted to make a demand of contribution; his only remedy is against the master."   |

Contributory Interests.English Practice.

to the underwriters of  
istence of such custom i  
sary in order to make t  
ble ; they being bound  
the usage of the particula  
Thus, carboys of vitriol,  
on the voyage between  
and Quebec, and pigs l  
London and Waterford  
been contributed for, aft  
son, though carried on c  
usage of trade, being pr  
each case, so to carry  
He supports his statem  
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writers on Insurance, E  
and Valin, and by the  
decisions in the causes o  
*v. Thwaites*, *Da Costa*  
*mounds*, *Gould v. Oliv*  
*Milward v. Hibbert*.

The English underwriters  
ever, do not take these de  
to be conclusive, or adm  
the principle is yet settl

**TIME AT WHICH THE VALUE OF  
THE CONTRIBUTORY INTER-  
ESTS SHOULD BE FIXED.**

- [32] When the General Average  
is the result of loss or dam-  
age to ship or cargo. Termination of the adventu

**WHEN IT IS THE RESULT OF  
EXPENSES INCURRED, VIZ :**

- [33] — — when no subsequent accident occurs. Termination of the adventu
- [34] — — when a subsequent accident does occur and the value of prop-  
erty saved is more than the amount of General Average. After the first accident an  
vious to the second.

| American.  | French.          |
|--|------------------|
| Established usage of a trade, when jettisoned, may be a just foundation for a claim to be contributed for. |                  |
| Termination of the adventure.  | Same as English. |
| Same as English.   | Same as English. |
| See sections 18 and 19.  | Same as English. |

| <u>Contributory Interests.</u>                           | <u>English Practice.</u>  |
|--|---|
| [85] — — the value of property finally saved is less.    | The value of the property finally saved is set off against the amount, and the balance distributed over the estimated values of the property as if the accident had not happened. |
| <b>Pecuniary Values Allowable.</b>                       |   |
| (1) General Average under one per cent.                  | Allowed.  |
| <b>SHIP'S STORES OR MATERIALS SACRIFICED.</b>            |   |
| (2) When replaced on or before termination of adventure. | Expense of replacing them less usual deductions — one-third new for old on repairs, &c.:  |
| (3) When not replaced until subsequently thereto.        | Estimated cost of replacing at termination of adventure if actual cost exceeds estimate, otherwise actual cost.   |
| (4) In case of total loss from voluntary stranding.      | No contribution.  |
| (5) When the vessel is wrecked before they are replaced. | The amount they would probably have realized had they been on board when the vessel is wrecked.   |
| <b>FREIGHT ON GOODS JETTISONED.</b>                      |   |
| (6) — when the vessel is not under charter.              | Freight as per bill of lading.  |
| (7) — when under charter.                                | Freight as per bill of lading.  |

| <u>American.</u>  | <u>French.</u>                          |
|---|---|
| Unsettled in practice.  | Same as English.                        |
| Allowed.  | Not allowable.<br><i>Rogron, 408.</i>   |
| Expense of repairing, less one-third. But if sails which have never been set, or uncoiled rope, be destroyed for repairs, the ship-owner has the right to claim for their value without a deduction of one-third new for old. | Same as English.                        |
| Same as English.  | Allowable as per surveyor's estimation. |
| General Average, even if vessel be totally lost, but goods saved.   | No contribution.                        |
| Same as English.  | No contribution.                        |
| Same as English practice. Actual freight lost by sacrifice.   | Same as English.                        |
| Same as English. Actual freight lost by sacrifice.  | As per charter party.                   |

| Pecuniary Values Allowable.   | English Practice.  |
|---|--|
| (8) — and the freight per bill of lading is less than that under charter.               | Freight as per bill of lading.   |
| (9) — when it is more.  | Freight as per bill of lading.   |
| (10) Freight when a jettison is followed by subsequent accident.                        | The probable freight that would have been earned under the bill of lading had the jettison not taken place.  |
| (11) When a vessel is subsequently wrecked and the cargo is forwarded by other vessels. | As above.  |
| (12) When the goods jettisoned must have been left behind if not jettisoned.            | As above.  |
| (13) When the goods are shipped in place of those jettisoned at a port of refuge.       | The net freight so earned is deducted from that allowed for jettison.  |
| (14) When goods are so shipped but not to replace jettisoned goods.                     | It is not deducted.  |
| CARGO.  |  |
| (15) In ordinary cases.   | The <i>market value</i> at port of destination at the time it would have been delivered there, less all charges that would have been incurred on it if not jettisoned. |
| (16) Goods sold to arrive.  | As above.  |
| (17) When the vessel puts back to port of shipment.                                     | As above.  |
| JETTISONED FOLLOWED BY TOTAL LOSS OF SHIP & CARGO.                                      |  |

| American.                               | French.   |
|---|---|
| s English. Actual freight by sacrifice. | As per charter party.   |
| s English. Actual freight by sacrifice. | As per charter party.   |
| s English practice.                     | As per charter party if the ship is under; for other cases as per bill of lading.   |
| s English.                              | As above  |
| s English.                              | As above.   |
| s English.                              | Same as English, not by law, but according to custom.<br><i>Custom of Bordeaux.</i> |
| s English.                              | Same as English.  |
| s English practice.                     | Same as English.  |
| s English.                              | Same as English.  |
| s English.                              | Same as English.  |

| <u>Pecuniary Values Allowable.</u>   | <u>English Practice.</u>   |
|--|--|
| (18) — if it does not save from the then danger.   | No contribution.   |
| (19) — if it does save from the then danger but ship and cargo are afterwards lost.                  | No contribution.   |
| (20) Jettison followed by wreck of vessel but not of cargo.  | What the goods would have realized if on board at time of wreck.   |
| (21) Do. of damaged goods.   | The probable value at port of destination if delivered there.  |
| (22) Do. of goods misdescribed by bill of lading.  |  |
| (23) Do. of sound goods which could not have reached their destination sound if not jettisoned.      | Their probable net proceeds at port of destination if not jettisoned.  |
| <b>CARGO SOLD TO PAY EXPENSES WHEN ALLOWED AT ALL IN GENERAL AVERAGE</b>                             |  |
| (24) — when sold at a lower price than they would probably have realized at the port of destination. | The probable net proceeds at port of destination.  |
| (25) — when sold at a higher price than they would have probably realized at port of destination.    | Net proceeds of the sale after deducting the freight the ship-owner would have earned had the goods arrived, but if the deduction of freight leaves a loss, then to follow rule above. |
| (26) When the vessel is subsequently lost with her cargo.  |  |

| American.   | French.  |
|---|--|
| tribution, if followed by ac-<br>total loss of vessel and<br>,  | No contribution.   |
| tribution, if followed by No contribution.<br>al total loss of vessel and<br>,  |  |
| s English.  | Same as English.   |
| le results at port of desti-<br>n if not jettisoned.<br><i>2d Phillips</i> , p. 130-8.                                  | Same as English.   |
| value to be clearly proven,<br>as freight.  | Are contributed for at the value<br>as described in bill of lading as<br>lower than real value, and at<br>real value if described as higher.<br><i>Rogron</i> , 418. |
| le results at port of desti-<br>n if not jettisoned.<br><i>2d Phillips</i> , p. 130-8.                                  | Same as English.   |
| ivable net proceeds at port<br>destination, less what they<br>produce, showing net loss,<br>treated as "cost of funds." | Same as English.   |
| ivable net proceeds at port<br>destination.   |  |
| paid at their net proceeds<br>e port where sold.<br><i>2d Phillips</i> , 135.   |  |

| Pecuniary Values Allowable.   | English Practice.   |
|---|---|
| (27) When the vessel returns home after jettison of her whole cargo and the voyage broken up. | Question very uncertain.<br>Would the captain have a right to pursue his voyage with empty vessel and demand his freight, and in such case the cargo be estimated at port of destination? |
| (28) Loss on cargo by sale to pay expenses when General Average and the vessel lost.          |   |
| (29) Provisions for Emigrants and Passengers.   | Cost of replacing.  |

**Adjustment.**

At what place ought the Average to be adjusted? The instant a sacrifice has been made or an expense incurred for the general good, it becomes a debt due by all the benefited parties to him by whom the loss is sustained or the disbursement has been made. But a contribution by all parties towards that loss or outlay may not be, and generally is not, convenient or even practicable at the moment, and it must be deferred till some aftertime. That time is usually the arrival of the ship at her port of destination. But if the occurrence which gives rise to a General Average, happen in an early part of the voyage and occasion the return of the ship to her port of sailing, or some other port accessible to the owner and the shippers of the cargo, it is often convenient that the General Average Contribution should be made there, and not delayed till the vessel's arrival at her destined port. In this instance a different value must be set on the contributory

| <u>American.</u>   | <u>French.</u>  |
|--|---|
| <b>Freight not earned.</b><br><i>2d Phillips, 129.</i>   |   |
| <b>Cargo valued at invoice cost.</b><br><i>2d Phillips, 129.</i>   |   |
| <br><br><b>Value of the goods at the port where sold.</b><br><i>2d Phillips, 135.</i>  |   |
| <b>Same as English.</b>  | <b>Value of at port of discharge.</b><br><i>Rogron, 417, 419.</i> |
| <br><br><b>The proper time and place for adjusting a General Average loss, is on the arrival of the ship at her port of destination. There the proprietors or representatives of proprietors, of all the property will be found ; there a uniform scale of value can be adopted as the basis of contribution ; and there the means will exist for enforcing payment should any of the contributors resist the claim for their quota.</b> |   |
| <b>In <i>Loring v. Neptune Ins. Co.</i>, 20 Pick., 411, it was held, that an adjustment and settlement of General Average at the port of destination binds the parties, though it may be made on principles different from those which govern where the policy was made.</b>   |   |
| <b>In <i>Barnard v. Adams</i>, 10 Howard, U. S. Sup. Ct. Reps., 270, 307, the Court said : "The place where average shall be stated is always dependent more or less on accidental circumstances, affecting not the technical termi-</b>   |   |

Adjustment.English Practice.

interests. It will be the cost of all of them at the time of sailing, less any diminution of value by the accident or sea damages. And although this is not strictly the correct method of valuation, there is little to object to it; since all the interests are subjected to the same treatment. As to the freight, an exception is made in its favor, and an estimate is formed of what it would produce net when the voyage shall have been completed.

*Hopkins, p. 74.*

American.French.

nation of the voyage, but the actual and practical closing of the adventure."

Judge *Phillips*, in his valuable work on insurance, states as a rule, that : "Where different parties are concerned in a General Average, the jurisdiction of the adjustment is at that port of delivery, at which their interests are to be separated."

2 *Phillips*, § 1413.

Judge *Parsons*, in his treatise on Maritime Law, seems to take the same view, referring to the foregoing rule as laid down by *Phillips*, he says : "This, indeed, is the port of destination for those goods which are to be delivered there. And the rule would be the same in substance, if it were that the adjustment should be made at the first port of delivery of any of the interests concerned."

1 *Parsons*, 382.

Though, as I have stated, it is customary where the vessel arrives at her port of destination, and delivers her cargo there, that the loss should be adjusted at that place and in conformity with the rule there prevailing ; still it does not follow that it is not competent for an adjustment to be made in any other port. It is well settled, that the master has the power, and, indeed, it is his duty not to deliver any contributory goods to their owners until their share of contribution is paid or secured to him for the benefit of the party to whom it belongs. This implies and requires a previous adjustment ; and there can hardly be

## GENERAL AVERAGE.

Adjustment.

As to the liability of Underwriters to pay General Average according to Foreign Adjustments.

English Practice.

In delivering the opinion in *Simeonds v. White*, 2 B & C, 805, Abbott, C. J., said: "The shipper of goods tacitly, if not expressly, assents to General Average, as a known maritime usage, which may, according to the events of the voyage, be either beneficial or disadvantageous to him. And by assenting to General Average, he must be understood also to assent to its adjustment, and to this adjustment at the usual and proper place; and to all this it seems to us to be only an obvious consequence to add, that he must be understood to consent also to its adjustment according to the usage and law of the place at which the adjustment is to be made."

Mr. Hopkins, in his valuable work on Average, p. 84, states the English rule, as follows: "In some countries the contribution is arranged and settled authoritatively by Tribunals of Commerce or official *Dispacheurs*. But the question which arises is, whether when ships, goods or freight have been insured in England, the underwriters are bound by those foreign settlements. There is, or I should perhaps rather say there was, a strong conviction to the contrary. It was known that by most

American.

an adjustment in part of anything of which all the elements are so closely connected and independent. It follows, therefore, that the rule in practice, should be as stated by Judge Phillips.

The authorities are diverse and conflicting.

In the following cases it has been decided that an adjustment made at a foreign port is not binding on an insurer. *Thornton v. U. S. Ins. Co.*, 3 *Fairfield*, 150; *Lenox v. United Ins. Co.*, 8 *Johns. Cas.*, 178; *Shiff v. La. State Ins. Co.*, 18 *Mart. La.*, 629. And it has been held that it was so binding, in *Strong v. N. Y. Firemen Ins. Co.*, 11 *Johns.*, 828; *Depau v. Ocean Ins. Co.*, 5 *Cow.*, 68; *Loring v. Neptune Ins. Co.*, 20 *Pick.* 411. The question was discussed by Mr. Justice Story, with his usual learning and ability, in the case of *Peters v. Warren Ins. Co.*, 1 *Story*, 463, and a strong opinion expressed in favor of the latter view of the case, though he expressly stated that he did not wish to be understood as deciding the point.

The usage, however, is well established in New York, Boston, and other cities, for the underwriters to accept as conclusive, foreign adjustments, in all cases, when made strictly in accordance with the laws and usages of the place of adjustment, and accompanied by proof of settlement in full faith there, unless there be reason to believe that laws or usages of that foreign

French.

Adjustment.English Practice.

foreign adjustments, the column of General Average comprehended items which would be disallowed by our own custom ; and that therefore insurers of ships sometimes, and the insurers of goods nearly always, are prejudiced by admitting a foreign statement as binding on themselves. That this was the case is shown by the practice which gained ground with many shippers, of introducing into their policies, the condition, that in case of General Average the underwriters should pay according to the foreign statement. The introduction of the clause is plainly indicative that underwriters were not bound to notice foreign adjustments without the proviso. The motive for introducing the words is sufficiently obvious; for proprietors of cargo are themselves obliged to pay average according to the laws and regulations of the foreign port, which generally makes their contributions greater than it would be a re-adjustment made in our own country, and consequently they have themselves to sustain the loss of that part which they cannot recover on their policy by an English statement. The underwriters argue, and very plausibly, that the undertaking called the policy is an instrument which binds by the laws and customs of the place where it is made ; by those laws and customs it is to be construed, and by them only. Some of the assured hold on the contrary that the mere *jus loci* of the contract is not to circum-

American.

place, of which there is no open knowledge in our community, be involved in the adjustment; in which case there would be a question arise as to these particulars.

The usage to accept of the foreign adjustment as conclusive, when correctly made is, I think, implied in every contract of insurance, as much as the warranty of sea-worthiness is. Nothing can be more clearly understood, than that the parties to a contract of insurance, in using the term General Average, or in contracting in reference to it, do in fact, and of necessity, refer to foreign as well as domestic adjustments;—to both or either, and recognized their rights and liabilities under the contract as being more or less dependent upon and to be determined by laws regulating both, or either, as the case may require.

Judge Parsons (vol. 2, page 431), expressed his views as follows: "It has also been said, that an adjustment of General Average, made at a port where it ought to be made, and made according to the laws of that port, and in good faith, binds conclusively all who are parties to it. This is certainly true, so far as relates to the original parties to the Average, or to the owners of the several sacrificed or contributory interests. But when this question comes up in reference to them who are only indirectly interested, by insuring those who are so directly, it assumes a somewhat different aspect. The contract of insurance is

French.

Adjustment.English Practice.

scribe their indemnification; that it is in accordance with the spirit which animates the system of insurance that they should have, under a policy, an *ample* indemnity against all risks; that variation in the laws which in foreign countries regulate Average Contribution is one of the risks; and that as the insurers know the port to which the ship is bound, they must take that contingency into account in fixing their premium. Impressed by the force of such an argument, underwriters have in many instances of late given way to it, and have paid Average on foreign adjustments upon this special reason, that had they been requested, they would have introduced the foreign General Average clause into the policy without asking any additional premium, and it therefore becomes a matter almost of indifference whether it is introduced or not. Arnould effectively decides, against my view, in favor of payment on foreign statements. He says an English underwriter is bound by a foreign adjustment *when rightly adjusted according to the laws and usage of the foreign port*; but unless it can be clearly proved that it was in strict conformity, he is not bound. He relies on two cases cited by Park, Newman *v.* Cazalet, and Walpole *v.* Ewer. The latter seems to have been decided against the defendants on a technical point; for Lord Ellenborough said that there must be an allegation of the fact as to law and usage, but

American.

made between parties, one of whom at least, and that the promising party, has a permanent location; there he enters into the contract, and makes his promise. And has he not the right to have construed and applied in all respects, by the law of the place where the contract is made and is to be performed? If a New York ship, bound to Calcutta, is insured in London, and incurs great expense by seeking a port wherein to repair damage caused by a sea peril, there may be three laws or rules, by which to determine how much the ship, or the insurer of the ship, shall pay. The law of New York, for example, in respect to the wages and provisions and expense of repair, may be one thing, that of London another, that of Calcutta a third. And if we admit, as is certain, that an adjustment made on arrival at Calcutta will bind ship, cargo, and freight, when the ship-owner comes to London to obtain indemnity from the insurers, may they not say, we insured you under the law of England; by that law the loss of the ship would have been far less than it is by the adjustment at Calcutta? This difference must be your loss, because we shall pay you by the law of London.

It is not to be denied that there is some plausibility in this view, and that it is sustained by respectable authorities. We cannot, however, doubt that the opposite rule is the true one; and the weight of authority, as well

French.

Adjustment.English Practice.

here the declaration contained none. Sir J. Arnould then continues, "it appears an almost unavoidable inference from these expressions of Lord Ellenborough, that where ships and goods are insured for a voyage from this country to a foreign port, and sufficient evidence is given of an invariable usage at such port to adjust, as General Average, losses which are not so in this country, the English underwriter is bound thereby, on the ground that he must be taken to have notice of the usage prevailing at the foreign port to which the contract of insurance relates, and by reference to which it ought to be construed. He must have contemplated the possibility of the interest having to pay Average in a foreign country." *Arnould on Ins.*, p. 944.

Now it will be observed that in these remarks of the learned writer on Insurance two things are involved :—First, that in an action against an underwriter for recovery of the sum contributed by a foreign Average adjustment the burden of proof lies with the plaintiff to show that that adjustment has been made up in strict conformity with the law and usage of the place. And if the adjustment has been made in a place little known or not much frequented, and the defendant should traverse and allege that the adjustment is not in conformity, &c., and so put the plaintiff on his proofs, it might be highly difficult to bring the necessary evidence, and it

American.

as of reason, would hold the insurers as among the parties upon whom a foreign adjustment, properly made, where made, is binding. The contract of insurance is eminently a maritime contract. It goes with the ship. The insurers can calculate this risk, for the policy is made upon a designated voyage, or upon time, or with a liberty of procedure agreed upon, and the insurers ought by a familiar principle of the law-merchant, to be governed by the law of whatever place becomes applicable to the interests insured in the course of the voyage or of time. The fault is in the diversity of these rules; this is less than it was; and the present strong tendency of the law-merchant to vindicate itself as part of the *jus gentium* and to cast off local peculiarities, permits the hope that this, and some similar questions will disappear."

French.

Adjustment.English Practice.

might even require that he should send a commission to that foreign place to establish the fact; the expense of doing which might deter him from proceeding. No one asserts that an underwriter is bound even by an English adjustment unless it be a correct one; but supposing the foreign adjustment to be correct, this writer decides that it is binding on the underwriter. And he justifies this decision by an argument, in the second place, which is of large application,—viz., on the implied notice which the underwriter is taken to have of the prevailing law and usage of Average in every port and place which is the *terminus ad quem* of any voyage a ship which he insures may be on. Now, were this principle applied to every other circumstance relating to an insurable interest about which there is the possibility of the underwriter procuring information for himself, i. e., about which he is taken to have notice, it appears to me that he would rarely be in a position to defend himself in any case of *suppressio veri* or of misrepresentation. The value, however, taken in foreign statements is not held to be binding on the English underwriter who has even agreed to the foreign Average clause, or who interprets his liability most liberally. He will only pay on a value within, or co-extensive with, the value insured; for it would be irrational to suppose that a shipper who only partially insures his goods

**ADJUSTMENT.**

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American.

French.

Adjustment.

By whom Adjustments are made ;  
and Adjuster's attitude.

English Practice.

should have all the benefit which he might have secured if he had paid for an insurance on the full amount of his interest."

Each claim is reduced to writing, and the document which sets it forth is called the Statement or Adjustment. Formerly, before commerce had expanded into its present gigantic proportions, the assured used to make up his own claim, or get some more experienced neighbor to do it for him. Afterwards, certain persons doing business at Lloyd's became esteemed for their knowledge and experience in such matters, and to them were entrusted many of the claims to get settled. Until about forty years ago the business of making up adjustments was combined with that of an insurance broker; but at that period there was sufficient business to establish Average Adjusting as a separate profession. The persons who devote themselves to this profession are called Average Adjusters, or Average Staters. In the majority of cases they decide the questions which emerge, and they make the numerous calculations which are involved in claims on goods. The position of the Average Stater is not official or authoritative; and both Underwriter and Assured are at liberty to dissent from his decisions, and raise questions on each separate case.

The respective rights of two parties bound by a contract so susceptible of misunderstanding as

American.French.

Adjustments are usually made by persons who make this their especial business.

The traditional and necessary attitude of an Adjuster is that of a judge, and not that of an advocate or attorney. It is his duty, in all cases, to act impartially between Insurers and Insured, regardless of favor towards friend or employer, and intent solely upon the legal and clerical accuracy of his calculations.

Adjustment.English Practice.

that of the policy of insurance are necessarily often ill-defined, and become the grounds of serious discussion ; and in matters relating to marine insurance there is frequently the collision of law and custom. Then there is the consideration of foreign codes and usage ; for although English underwriters are in strictness bound only by the laws of their own country, yet their system may be said to make nutations to foreign practice, which is too large and important to be ignored.

Some remedy is therefore required for the settlement of disputed claims independently of the ultimate appeal to law. In some cases, it is true, a legal decision may be the most satisfactory solution ; but as the process is very expensive, and the position of litigants generally indicates or leads to some hostility of feeling, and inasmuch as claims are very numerous—of hourly occurrence, so that it may probably be stated that a claim large or small arises upon one policy in every five effected, taking the various trades together—a constant recourse to law would be most undesirable, and must eventually overthrow the system of insurance. The remedy is usually found by submitting the matter to the decision of some skilful and disinterested Adjuster.

Thus the Average Adjustor's office is really judicial, and not, as some imagine, one merely of routine. Precedents and rules indeed exist in plenty ; but they

**ADJUSTMENT.**

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American.

French.

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Adjustment.

Whether insured if he has a claim against others for contribution, is bound to make that claim before he calls on the insurer.

English Practice.

are not always apposite, and in consequence of an inexhaustible variety of circumstances, they cannot always be pleaded for or against the admission of particular charges in a statement. "The law of cases of necessity is not likely to be well furnished with precise rules; necessity creates the law, it supersedes rules; and whatever is *reasonable* and *just* in such cases, is likewise legal." *Hopkins on Average*, p. 117, 398.

American.French.

now to be well settled, he assured may claim of underwriters his whole loss, erring to them his claim contribution, provided, however, he has not, by refusal of seller or some other act of his lessened that value or precluded its recovery. But practically, the rule is this: if the claimant can collect his contribution, he should do so, as in a better position to do so than the underwriter, the claimant not being compelled to part with the possession of goods until the sum contributable in respect of them is either paid or tendered to his satisfaction. *Math v. Church*, 1 Caines, *Watson v. Marine Ins.* Johns. 57, 62; *Amory v. 6 Mass.* 318; *Faulkner & Gusta Ins. Co.*, 2 McMullan, 18; *Hanse v. New Orleans F. Ins. Co.*, 10 La., 1; *v. Providence Washington Ins. Co.*, 4 Mason, 298; *v. Tremont Ins. Co.*, 9 415, 419,

**GENERAL AVERAGE.**

| <u>Adjustment.</u> | <u>English Practice.</u> |
|--------------------|--------------------------|
|                    |                          |

American.

It was decided in *New York*, in *Maggath v. Church*, 1 Caines, 196, that the assured might recover the whole damage of his insurers in the first instance, and leave them to claim a contribution from the other shippers and the owners of the ship. In this case corn was damaged by cutting away the mast; the assured could not have recovered for the corn as a Particular Average, it being one of the Memorandum Articles.

In *Faulkner v. The Augusta Ins. Co.*, 2 McMullin's R., 158, it was held, that a party insuring goods is not obliged to demand payment of the contributors before bringing suit against the insurers for a loss by jettison.

In the somewhat recent case of *Forbes v. The Manufacturers' Ins. Co.*, 1 Gray's R., 371 (A. D. 1854), the Supreme Court of Massachusetts held, that the owners of teas laden on board the ship "Paul Jones," a portion of which had been jettisoned on the voyage from China, might recover of the underwriters without first demanding contribution from the other interests benefitted by the jettison.

French.

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American Practice.

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*Are Underwriters on a Vessel which puts away to a port of necessity for repairs of sea-damage, liable for the Wages and Provisions of the Crew during such departure from the voyage, provided those charges are excluded from the adjustment by the law and usages of the place, where the General Average is required by law to be adjusted?*

In the present state of judicial doctrines and elementary opinions, this question is not one of easy solution. It has been contended by very eminent mercantile jurists in New York and Boston, that it was decided against the underwriters by the Supreme Court of Maine, in *Thornton v. The United States Ins. Co.*, 3 *Fairfield's Reps.*, 150. The ground upon which this decision was rested, is, that the insured is entitled to complete indemnity from all losses which are within the policy; that by the law of the place where the policy was made and to be performed, the cost of wages and provisions incurred during such a departure from the voyage, is a General Average charge; and in as much as the insured has received nothing towards this charge by contributions from the other interests, and has not failed to receive such contributions through any fault of his own, he may recover from his underwriters. Whether he was allowed to recover the whole or only the vessel's contributory share does not appear. But it seems to me the language of the Court would clearly infer, that not only is the portion of Wages and Provisions which should have been assessed upon the ship, as one of the contributory interests, if they had been included in the foreign adjustment, recoverable of the insurers, but that the whole amount is to be allowed in order to secure to the insured a full indemnity.

Mr. Phillips and Mr. Parsons do not, apparently, so understand that case, but consider it as establishing the right of the insured to recover only the ship's contributory portion, 2 Phillips on Ins., § 1415; 2 Parsons' Maritime Law, p. 433.

The decision, in 3 *Fairfield's Reps.*, by Parris, J., is that of a respectable Court, and was apparently made upon careful consideration. It is entitled to, and would undoubtedly be allowed much weight, if the same question were to be raised in any other State. It would not become me to express a confident opinion in opposition to this decision; but I cannot acquiesce in its soundness, and I think it would be overruled by the Supreme Court of either New York or Massachusetts, or the Supreme Court of the United States.

It seems to beg the question if we start with the assumption that the insured is entitled to indemnity for the loss of Wages and Provisions, and then argue that because he has not received any indemnity by a contribution, he may recover of his underwriters.

The insured is not entitled to indemnity for the loss of Wages and Provisions, except in General Average, so that the first question arising, and which must be settled before any claim to indemnity

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can be made out is, whether the General Average referred to in those policies where it is introduced, means General Average, according to the law of the place where the policy is issued, or according to the law of the port of destination. I think it is the latter which is meant. Both parties are understood to refer to and agree to be bound by the law of the place where the General Average is required to be assessed for the purpose of determining whether a particular item shall be deemed fit to be included in General Average. Prior to this decision (*Thornton v. U. Ins. Co.*), it seems to have been well understood that there can be no liability in *General Average*, save in accordance with the laws of the place where the adjustment is required to be made. In the language of Lord Tentderden (2 B. & C., 113), by assenting to General Average, the co-adventurers must be understood to assent also to its adjustment, and to its adjustment at the usual and proper place; and to all this it seems to us only an obvious consequence to add, that they must be understood to consent to its adjustment, according to the usage and law of the place at which the adjustment is to be made.

And it seems to have been the opinion of Mr. Justice Story, as expressed in *Peters v. The Warren Ins. Co.*, 1 Story's R., 470, that the terms of our policies respecting General Average, do not mean to refer to what is General Average by our law, when an adjustment is to be made at a foreign port of destination; but to such losses and expenses as the law of the port of destination includes therein.

If the law of the place of adjustment which excluded Wages and Provisions is disregarded, then it would seem the ship-owner will recover of the underwriter the entire amount of the loss of the Wages and Provisions, for it has been decided that the assured, on whom a General Average loss falls, may recover the whole amount of such loss from his underwriters, leaving them to seek contribution from the co-adventurers, *Forbes v. Manuf. Ins. Co.*, 1 Gray's R., 371 (A. D., 1854).

It therefore follows, that if the doctrine in the case of *Thornton v. United Ins. Co.*, is to be received as sound, the underwriters are answerable for the whole loss, and not for what would have been the ship's contributory share, as is the inference drawn from it by Mr. Phillips and Mr. Parsons.

The following extract, from an elaborate and lucid opinion of Mr. Chas G. Loring, of Boston, confirms my own view with reference to the liability of the underwriters:—"The meaning of the term General Average is simple and of universal acceptation—'a loss or sacrifice voluntarily incurred for the common benefit of all concerned in the voyage, and to indemnity for which all are bound to contribute in proportion to the interests, to protect which the sacrifice was made.' And each element is essential; no loss can fall within the universally received definition, which was not in its nature voluntary,

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and does not, for that reason, impose upon the co-adventurers the obligation to contribute where more than one interest is concerned, or is not in its nature such as would impose that obligation in such case. And it seems to follow as a necessary conclusion, that any loss, for which such contribution cannot under any circumstances be demanded, cannot be accounted a General Average loss."

The meaning of the term being thus clearly ascertained, the next question presenting itself is, how is it to be determined whether a loss in question is within the definition, or one for which contribution is legally demandable? And the answer is equally explicit and well settled by judicial decision, namely, that a General Average loss must be adjusted by the laws of the port of destination, if the vessel put into an intermediate port, and the voyage be subsequently pursued, or at the port of departure if the vessel return there to refit. And that such laws are conclusive upon the relative rights and liabilities of the owners of ship, freight and cargo; and not only in regard to the valuations, contributory interests, proportions, &c., &c., but also in reference to the proper subjects to be contributed for, or excluded from the claim for contribution. This must certainly now be considered the general law as settled in this country and in England.

*As between the owners*, then, there would seem to be no doubt, that no loss can be deemed a General Average loss which, by the laws of the place of adjustment, must be excluded from the right of contribution, but that it thereby becomes, so far as *they are concerned*, a partial loss only, falling exclusively upon the individual owner of the subject lost or damaged.

On what principle, then, can he claim of his underwriters payment on account of it as being a General Average loss? He clearly has not actually sustained any such, for by the laws conclusive upon him and all other owners interested in the voyage, he is precluded from claiming against them, and the *nature of the loss* is thus, by the *only legal authority* definitely and *practically* determined not to be an average loss. *In the place* then, and *at the time*, and for the *only purposes of an adjustment*, and by the *only legal authority*, the loss is not an average loss, and can confer on the owner of the subject of it no right, nor impose upon him any liability as such.

How then can his insurers be held liable to indemnify him as having sustained one? The only answer of which I am aware, is found in the case of *Thornton v. United States Ins. Co.*, above cited, in which the Court says: "The general rule is, that the *law of the place of the contract* is to govern. By our laws the term *General Average includes Wages and Provisions*, and unless there can be something in the contract from which it can be inferred that the *parties contracted with* reference to the law or usage of some other

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"place this construction must govern. That the construction of a contract may be varied by reference to the law of the place where it is to be performed, but in this case the place of execution and performance is the same, and although the amount of indebtedness might depend upon and be affected by foreign laws, as they would measure the amount of contribution to be received from owners of the goods, yet as the *contract is one of indemnity*, it must render the *insurers answerable for all losses insured against*, except so far as the insured has been indemnified by the foreign adjustment. We cannot admit that the contract is to be construed by foreign law or usage, or that we are to resort to either to ascertain what losses are covered by it, or what is to be included in each description of loss. The insured has sustained a loss covered by the policy. For the amount of that loss the insurers are answerable after deducting what the assured has received by way of average contribution from owners of the cargo, and we are not able to see any sound reason for limiting his claim to the sum estimated as his loss in the foreign adjustment, when it conclusively appears, that losses were excluded from that adjustment which, by our laws were covered by the policy and to be borne by the insurer."

This whole reasoning obviously depends upon assuming that the parties to the contract, when using the term "General Average," or agreeing for an indemnity against one, meant a General Average adjusted according to the laws of the United States. But this is clearly not so, and the Court admits that it is not so, for it expressly says, that where a loss by contribution is sustained by the owner of the goods, under a General Average adjusted abroad, which he would not be liable for under one made at home, the insurers are bound to indemnify him; and it is universally conceded that General Averages being binding, as above stated, on the owners, their insurers are held to indemnify them accordingly, although the losses may be greater than they would have suffered, or be in contributions for items that would not have been admitted under a domestic adjustment; and that the insurers can never be called upon to pay to the owners a greater loss than he has been put to by the foreign adjustment, although it be much less than would be due to him on one made at home. This assumption, therefore, is plainly erroneous, for if the parties to the policy intended to contract solely with regard to "General Average losses," as regulated by the laws of the place where it was underwritten, it would follow inevitably that the insurers could never be held for more than such an adjustment would impose upon them, and that the assured would always be entitled to recover all that such an one would give to him, both of which conclusions this same Court expressly repudiates, and the whole mercantile world joins in repudiating.

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Nothing, therefore, can be clearer than that the parties, in using the term General Average, or in contracting in reference to that species of loss, do in fact and of necessity, refer to foreign as well as domestic adjustments; to both or either, and recognize their rights and liabilities under the contract as being more or less dependent upon, and to be determined by laws regulating both, or either, as the case may require. And if they do thus contract in necessary reference to both, and the rights and liabilities accruing under them respectively, upon what principle can it be maintained that each is not as binding in deciding what is and what is not the subject of Average loss, as in determining upon the valuations, proportions of contribution, and all the other elements constituting one.

It is manifest that *there can be but one Average loss arising from one disaster*, and that it must *by law be adjusted*, and *all the rights and liabilities of the parties be definitely settled*, at the *place* which the laws prescribe for its adjustment. Any loss, therefore, that by those laws is not the lawful subject of contribution, cannot be accounted a General Average loss there; nor can it properly be accounted one any where else, because no adjustment of the damages can be made in any other place. And to hold the underwriters liable in such a case as this, is to hold them, in fact, for two General Average losses, one abroad so far as the ship-owner has sustained any loss under that, and one here, where none has taken place.

When the insurers contract to indemnify the assured against an *Average loss*, they certainly cannot be understood as stipulating for more than a reimbursement to him of whatsoever shall be his *Contributory share of it*; how then can they be liable to pay him the full amount of any loss for which *no one is, or ever could have been or ever can be*, made liable to contribute any thing? Is it not a contradiction in terms to account such an one an average loss? And what answer is given by saying, that it is one under an adjustment made according to the laws of the place where the contract was made? That amounts to nothing more than saying what it would have been under other circumstances, it *does not make it one under these.*"

And he concludes as follows: "Upon the fullest consideration which I have been able to give, I should feel the clearest conviction that if Wages and Provisions are not subjects of average contribution, according to the law and usage prevailing at the port of destination, the insurers are not liable for them, and this conviction, notwithstanding the authority of the case of *Thornton v. U. S. Ins Co.*, which, of course, raises great doubts of its propriety, remains such, that I think that case would be overruled by the Supreme Court of this State (Massachusetts), and compels me, therefore, so to decide."

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**APPENDIX.**

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## SHIP RACHEL.

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### Supreme Court of the United States.

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No. 99—DECEMBER TERM, 1865.

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ALEXANDER MCANDREWS, *et al.*,

Plaintiffs in Error,

vs.

ISAAC THATCHER, *et al.*

In error to the Circuit Court  
of the United States for the  
Southern District of New  
York.

#### DRAFT OF A HEAD NOTE.

1. Rightly understood, general average is that contribution which is made by all who are parties to the same adventure, towards a loss arising out of extraordinary sacrifices, or extraordinary expenses, incurred by some of the parties for the joint benefit of both ship and cargo.

2. Such a loss, in order that it may properly be the object of such a contribution, must have been of an extraordinary nature, voluntarily incurred, under circumstances of imminent peril, for the common benefit of the whole adventure, and it must have aided in the accomplishment of that purpose.

3. Stranding of the vessel does not terminate the duties of the master, but he is still under obligation to take all possible care of the goods, and, if practicable, to get the ship off and prosecute the voyage.

4. In such a case, the master becomes the agent of all concerned, and as such, may do what is necessary to take care of the cargo and rescue the ship from the impending peril.

5. Much is then confided to his discretion; but he is bound to be vigilant and energetic, and to exercise good faith and proper nautical skill.

6. Obligation of the master is, to transport the goods to the place

of destination, and if practicable, and the goods are not perishable, he may retain the goods, repair the ship, and prosecute the voyage to its termination.

7. Repairs, where the stranding is involuntary, are particular average; but the proper adjustment of general average, includes all the expenses of unloading and saving the cargo, rescuing the ship, re-loading the cargo, and the expense of taking care of the goods while they are separated from the ship.

8. Special power of the master, in such a peril, arises from his original obligation to transport the cargo, and the necessities of the case, and its extent is measured, chiefly, by those considerations.

9. Evidence shows that the means employed by the master to save the cargo and rescue the ship, were proper means, and the whole expense incurred by him was a proper charge in general average, as it was incurred for the joint benefit of both ship and cargo.

10. Discrimination in favor of different consignments, merely because one is delivered in safety before another, is never made; nor is the cargo necessarily relieved from liability to contribute towards the expenses of saving the ship, because the cargo was unladed before the ship was rescued.

11. Rule is, that if the ship is also saved by the same continuous series of measures as those by which the cargo was saved, then the cargo is bound to the ship, and the ship to the cargo.

12. They are so bound, because the liability to such contribution continues until the part of the adventure claimed to be exempted is completely separated from the residue, so as to leave no community of interest remaining.

13. General rule is, that where the cargo continues under the control of the master, so that it may be taken on board for the purpose of prosecuting the voyage, the common interest remains.

14. Plaintiffs in this case are not entitled to recover, because it appears not only that the cargo was delivered to the consignees but that the series of measures employed by the master, and through which he saved the cargo, failed altogether to save the ship.

15. They cannot recover because the expenses in controversy were not incurred by the master, but by the underwriters of the ship, after the master had saved the cargo and abandoned the ship and all endeavors to save her from the disaster.

16. When the master abandoned the ship, and all endeavors to save her, the separation between the ship and cargo became complete, and all community of interest was gone.

Mr. Justice CLIFFORD delivered the opinion of the Court.

Plaintiffs in the court below were the owners of the ship *Rachel*, and the defendants were the consignees of a certain portion of the

cargo under a bill of lading consigning to order. Record shows that the controversy grew out of a disaster which happened to the ship while on a voyage from Liverpool to New York, with all her cargo on board. Action was assumpsit, and the plea was the general issue. Substance of the declaration was, that the ship, with the cargo on board, in the prosecution of the voyage, was, by peril of the seas, forced upon a certain bank, known as West bank, on the high seas, and that the ship, with the cargo, was thereby put in great danger of being totally lost; and that various expenses were incurred in the endeavor to save the ship and cargo, amounting, in all, to the sum of fifteen thousand dollars; and the allegation is, that by means thereof, the ship and cargo were saved, and that the goods consigned to the defendants were duly delivered to them, and were by them accepted. Claim set up by the plaintiffs was for the freight due from the defendants, and for their rateable proportion of the expenses incurred in saving the ship and cargo. Defendants paid the claim for freight, but refused to pay any part of the claim for general average.

1. Parties went to trial, and the verdict and judgment were for the plaintiffs; and the defendants excepted to the charge of the presiding justice, and removed the case into this court. Exceptions were duly filed by the defendants, both to the charge of the court, as given to the jury, and to the refusal of the court to instruct the jury as requested; but in the view taken of the case, it will not be necessary to examine the prayers for instruction, nor to remark upon any part of the charge of the court, except the introductory proposition; which undoubtedly made it the duty of the jury to find their verdict for the plaintiff.

Substantial effect of the language employed by the court was, that the cargo of the defendants, upon the evidence given in the case, was bound to contribute, in general average, to the expenses incurred in saving the vessel, and if so, then the plaintiffs were entitled to recover. Neither party pretends that there was any dispute about the facts in the case, as assumed by the court; but the defendants insist, that in view of the evidence as understood by both parties, the instruction should have been that the plaintiffs were not entitled to recover.

2. Conceded facts were, that the ship sailed from Liverpool on the twenty-ninth day of July, 1859, with a general cargo, consigned to various persons, and consisting, among other things, of four hundred boxes of liquorice paste, consigned to the defendants. Proofs, also, showed that the vessel, with her cargo on board, arrived in safety inside of Sandy Hook, on the twenty-first day of September, of the same year; but in coming up the bay, in a heavy gale from the eastward, she struck on the West bank, in the lower bay of the harbor, and became fast. Steam-tugs went in the afternoon of that day to her assistance, and endeavored to get her off, but without any success.

Regarding the ship and cargo as in peril, the master accepted the

services of the first steamer which came alongside, and the agreement was, that if the steamer was successful in getting the ship off, he was to pay one thousand dollars; but if unsuccessful he was to pay nothing. Under that agreement the steamer passed her hawser on board, and made fast to the ship; but finding that her power was not sufficient to accomplish the object, she set a signal for another steam-tug, and another immediately came to her aid, and the power of both combined was tried, but they could not start the ship from the place where she lay imbedded in the sand.

Statement of the record also is, that these steamers continued their efforts to get the ship off for several hours, and that during that period a third steamer came alongside, and made her hawser fast to the afterbitts of the ship; but in her endeavor to start the ship, she parted her hawser, and all came to the conclusion that their efforts were fruitless. Master, at six o'clock the same afternoon, left the ship and went to the port for advice and assistance; but the mate and mariners remained on board, although at four o'clock on the following morning, it appears that the water in the ship was of the depth of fourteen and a half feet, and that it was increasing fast.

Cargo was insured in New York, and the ship in Boston. Underwriters of the cargo, and the consignees of the ship, became advised of the stranding of the vessel, and the former, with the knowledge and consent of the latter, during the forenoon of the second day after the disaster, sent their agent to the ship for the purpose of saving, if possible, both the vessel and the cargo. Steamer with the agent on board, arrived alongside, about nine o'clock, and it appears that she had a schooner in tow, and every necessary appliance—such as steam pumps and wrecking apparatus—to rescue the ship, or, if necessary, to discharge the cargo. They continued these efforts, under the direction of the master, after his return to the ship, for two days; but finding that they were unable to get the ship off, they commenced to discharge the cargo into lighters, and transport it to its place of destination.

Such of the cargo as was so discharged and transported was placed in the custody of the agents of the ship, and those agents, upon receiving the usual average bond, delivered the same to the consignees. Corresponding efforts were continued until the twenty-sixth day of the same month, when, as the master testifies, the steam pumps were taken down and carried away, having finished discharging the cargo. Before the agent left, however, he went to New York and consulted with the consignees of the ship, and they refused to authorize him to incur any further expense. Positive statement is, that the ship, at that time, was fast settling in the sand, and that the tide ebbed and flowed in her as she lay.

Intelligence of the disaster also reached the underwriters of the ship, and they sent their agent to the wreck. He went on board at one o'clock the next morning after the other agent left, and took

charge of the ship ; but at nine o'clock the crew came aft, and refused to do duty. Deprived of their services, he went immediately to New York and employed other men to supply their places, and the crew left the ship. Next two days were spent in procuring oil casks, and in attempts to buoy the ship by their use, but without any beneficial result, except to save some of the materials of the vessel. Violence of the storm increased, and it was found the next morning that the ship, at her hatches, had eighteen feet of water ; and as the sea was breaking over her, and she was apparently going to pieces, the agent of the underwriters directed that her main topmast should be cut away, and that order was carried into effect.

Unable to do more, the master abandoned the ship, and left her where she lay, in the charge of the agent of her underwriters. Undismayed by the peril of her condition, the agent of her underwriters continued his endeavors until the eleventh day of November following, and on that day, by the assistance of two steamers, he succeeded in getting her free, and towed her up to the marine railway, at Hunter's point, for repairs. Examination there made showed that there were remnants of the cargo on board, and upon that discovery they were discharged and delivered to the consignees.

3. Views of the defendants are, that the case, as stated, is not a case for contribution in general average, and that the court erred in instructing the jury that the plaintiffs were entitled to recover.

Primary proposition maintained by the defendants is, that expenses incurred in a voyage, although they were necessary and proper, are not to be carried into general average unless they were of an extraordinary character, nor unless it appears that they were incurred for the joint benefit of the ship and cargo; and that inasmuch as it appears in this case that the cargo had been stored in safety at the place of destination before the expenses, for which the suit was commenced, were incurred, the claim of the plaintiffs cannot be sustained.

Decision and judgment in the case must depend upon the question whether the several sums expended by the agent of the underwriters of the ship after he went on board and took charge of the vessel and the men and means employed to save her, were properly carried into the adjustment, because it is conceded that if those sums be excluded from the expenses of general average the verdict should be for the defendants.

4. Sacrifices, voluntarily made in the course of the voyage, of part of the ship or cargo, to save the residue of the adventure from an impending peril, or extraordinary expenses incurred for the joint benefit of both ship and cargo, and which became necessary in consequence of a common peril, are usually regarded as the proper subjects of general average.

All losses which give a claim to general average contribution, says

a standard writer upon the law of insurance, may be divided into two great classes :

1. Those which arise from sacrifices of part of the ship or part of the cargo, purposely made in order to save the whole adventure from perishing.

2. Those which arise out of extraordinary expenses incurred for the joint benefit of both ship and cargo.—(2 Arn. on Ins., 881.)

Present case, if the defendants are liable at all, falls within the latter class, and, consequently, it will not be necessary to remark upon the former class, although cases of jettison are much more frequently presented for decision than cases growing out of the stranding of the vessel. Stranding in this case was involuntary; but it cannot be doubted that the ship and cargo were jointly exposed to a common peril, and were in imminent danger of being wholly lost. Such being the fact, it is clear that the expenses of saving the ship and cargo were a proper subject of joint and rateable contribution in general average by vessel, freight, and cargo, provided the vessel and cargo were saved by the same series of measures during the continuance of the common peril which created the joint necessity for the expenses.—(Ben. & Stev. on Av., p. 96. Baily on Av., 45, 71. Birkley v. Presgrave, 1 East., 220. Add. on Con., 490.)

Undoubtedly the community of extraordinary peril commenced with the stranding of the vessel; but the question is where it terminated? Three theories may be suggested :

1. That it terminated when the cargo was separated from the ship and was transported to the port of destination and delivered to the consignee.

2. That it terminated when the master, acting in good faith as the agent of all concerned, yielded to the necessities of his situation and abandoned the endeavors to save the ship, and left her where she was stranded, in charge of the agent of her underwriters.

3. That it did not terminate until the ship was got off from the bank where she was stranded, and arrived at the marine railway for repairs in her port of destination.

Theory of defendants is substantially expressed in the first proposition; but the plaintiffs insist that the community of peril did not terminate until the arrival of the vessel at the port of destination; and, if not, then the charge of the court was correct, and the judgment of the court must be affirmed.

Natural justice requires that where two or more parties are in a common sea risk, and one of them makes a sacrifice or incurs extraordinary expenses for the general safety, the loss or expenses so incurred shall be assessed upon all in proportion to the share of each in the adventure; or, in other words, the owners of the other shares are bound to make contribution in the proportion of the value of their several interests.—(2 Phil. on Ins., p. 65. Holt on Ship., 482.)

Courts universally admit that the Rhodian law was the parent of maritime contribution, although in terms, it made no provision for any case of general average, except for that of jettison of goods as the means of lightening the vessel. But the rule, as there laid down, has never been understood as being confined to that particular case, but has always been regarded as a general regulation, applicable in all cases falling within the principle on which it is founded.

Principle of the rule is, that "what is given for the general benefit of all shall be made good by the contribution of all; and hence it is that losses which arise out of extraordinary expenses incurred for the joint benefit of ship and cargo are as clearly to be carried into the adjustment as those which arise from sacrifices of part of the ship or part of the cargo.

Settled rule, also, is, that when a vessel is accidentally stranded in the course of her voyage, and by labor and expense she is set afloat and completes her voyage with the cargo on board, the expense incurred for that object, as it produced benefit to all, so it shall be a charge upon all, amounting to the rates apportioning general average.—(Bedford Com. Ins. Co. v. Parker, 2 Pick. R., 7. Ben. & Stev. on Av., p. 139.)

In case of accidental stranding, says Mr. Phillips, the expenses incurred for getting off the vessel, as far as they are incurred for the purpose of saving the ship, cargo, and freight, and are common to all those interests, are a subject of contribution by all. Expenses, however, incurred for any separate interest, he says, are wholly chargeable to that interest, and there can be no doubt that the proposition, as stated, is correct as a general rule, and yet it is apparent that there will often be difficulties in its application. Foreseeing those difficulties, the same author attempts to obviate them by three practical illustrations, which it becomes important to notice :

1. That if the ship is got off without discharging the cargo, or by discharging only a part of it, then the whole expense is general average, unless the vessel needs repairs; but if she needs repairs those are particular average.
2. That if the vessel does not float when the whole cargo is discharged, the subsequent expenses do not concern the cargo, but are particular average on the vessel in the same manner as repairs.
3. That goods, when landed from a stranded ship, and delivered to the consignee, cease to be liable to contribute for expenses subsequently incurred.

Unquestionably the rule enunciated in the first illustration is correct; but grave doubts are entertained whether the second and third can be admitted in *all cases* without important qualifications.

Although the stranded vessel may not float, as a consequence of the unloading of the goods, still she may be so lightened by the operation that the usual appliances at hand may be amply sufficient to

enable the master to rescue the vessel without much expense or delay and put her in a condition to receive back the cargo and transport it to the port of destination ; and, in the case supposed, it cannot be doubted that the expense of saving the vessel, as well as the expense of preserving and reloading the cargo, would be the proper subject of general contribution.

So, where the cargo consists of various consignments, and the vessel is stranded in the harbor of the port of destination, it will seldom or never happen that all the consignments will be delivered at the same time. On the contrary, some of necessity will be delivered before others ; and yet, if the unlading of the cargo has the effect to make the vessel float, and the whole adventure is saved by one continued, unremitting operation, under the directions of the master, as the agent of all concerned, it would seem that the case was one falling directly within the equitable principle of general average which requires that all the interests shall contribute for the expenses incurred to save the whole adventure from common peril.—(Ben. & Stev. on Av., 141, and note.)

Unless the rule is so, a new statement of the adjustment would be necessary upon each respective part of the cargo delivered as they successively reached a safe destination, which would be impracticable, and contrary to the usual course of adjusting such losses.

On the other hand, it is an undoubted rule that goods or any interest are not liable to contribute for any general average or expenses incurred subsequently to their ceasing to be at risk, because all that was not actually at risk at the time the sacrifice was made or the expense incurred was not saved thereby, and no interest is compelled to contribute to the loss or expense which was not benefited by the sacrifice.—(2 Phil. Ins., sec. 1,407. 2 Arn. on Ins., sec. 338.)

5. Light is shed upon this inquiry by referring to the duty of the master, who, in case the vessel is stranded, becomes the agent of all concerned. Duties remain to be performed by the master as the agent of the owner, or of all concerned, after the voyage is suspended by the stranding of the vessel. His duty is, if practicable, to relieve the ship and prosecute the voyage ; and his obligation to take all possible care of the goods still continues, and is by no means discharged or lessened while it appears that the goods have not perished with the wreck. Safe custody is as much the duty of the carrier as due transport and right delivery ; and when he is unable to carry the goods forward to their place of destination by the stranding of the vessel, he is still bound by the original obligation to take all possible care of the goods, and is responsible for every loss or injury which human skill and prudence could prevent.—The Propeller Niagara, 21 How., 27. King v. Shepherd, 3 Story, C.C., 358. Elliott v. Russel, 10 Johns, 7.)

Conscious of the nature and extent of his obligations, the master

accepted the services of the several steamers which went to the relief of the ship, and continued his endeavors to save both ship and cargo until the latter was safely delivered at the port of destination, and until the consignees of the ship declined to authorize any further expense.

Evidence, as reported, is satisfactory that the master acted throughout in good faith, and there is not the slightest ground to conclude that he was wanting, either in personal energy or in nautical skill. Take the circumstances, as detailed in the statement of the case, and it is clear that he could not have been justified in doing less than he did; but the question is, whether or not he was required to do more. Plainly his duty was not ended when the vessel was stranded, nor even when the cargo had been removed for the double purpose of saving it and of lightening the ship as a part of the means adopted to get her off.

Means devised on the occasion were such as are usually employed for the purpose, and not a doubt is entertained that if the master had been successful in saving the ship as well as the cargo, the whole expense, inasmuch as it was the result of one continuous unremitting operation, would have been properly regarded as a general average expenditure. Where the ship is stranded, much is necessarily confided to the discretion of the master, and if the ship had been saved through the means which he employed, it is clear that the expenditure would have fallen directly within the definition of general average, as given by the best writers upon the subject.

6. General average denotes that contribution which is made by all who are parties to the same adventure towards a loss arising out of extraordinary sacrifices made, or extraordinary expenses incurred by some of them for the common benefit of ship and cargo.

Usual conditions annexed to such a loss, in order that it may be the object of such contribution, as generally stated, are, that it must have been of an extraordinary nature, advisedly incurred, under circumstances of imminent danger, for the common benefit of ship and cargo; and it must have aided at least in the accomplishment of that purpose.—(M & P. on Ship., 320. MacLachlan on Ship, 556. Smith's M.L., 6th ed., 336. Barnard v. Adams, 19 How., 270.)

Suggestion is, that the cargo was separated from the ship, but the mere fact that the cargo is unladen, although it is done in part for the purpose of saving the goods, yet, if it is also done for the purpose of lightening the vessel, and as a means of causing her to float, and of saving her from the common peril, will not necessarily divest the transaction of its character as an act performed for the joint benefit of the ship and cargo.

Except when the disaster occurs in the port of destination, or so near it that the voyage may be regarded as ended, the master, if the goods are not perishable, has the right, and if practicable, it is his

duty to get off the ship, reload the cargo, and prosecute the voyage to its termination.

Where the whole adventure is saved by the master, as the agent of all concerned, the consignments of the cargo first unladen and stored in safety are not relieved from contributing towards the expenses of saving the residue, nor is the cargo, in that state of the case, relieved from contributing to the expenses of saving the ship, provided the ship and cargo were exposed to a common peril, and the whole adventure was saved by the master in his capacity as agent of all the interests, and by one continuous series of measures.

Ship and cargo were in imminent danger from a common peril, and, under those circumstances, it was the duty of the master, as the agent of all concerned, to use his best endeavors and employ his best exertions to save the whole adventure.

Viewing the matter in that light, his first efforts were directed to the object of relieving the vessel by means of the steamers which came alongside; but, finding that the ship was too fast in the sand to be got off by those means, he commenced to discharge the cargo to save the goods and lighten the ship as, apparently, the best possible measure which could be adopted to save the whole adventure.

7. None of these propositions are controverted by the plaintiffs; but they insist that the subsequent expenses, incurred by the agent of the underwriters of the ship should also be carried into the adjustment, and that the cargo saved by the master should be adjudged liable to contribute towards the expenses incurred by the agent of the underwriters of the ship in accomplishing, at the end of six weeks, what the master abandoned as hopeless and as a total loss.

Before the last-named agent came on board, the master, ascertaining that the consignees of the ship would not authorize any further expenditure, had dismissed the steamers that went to the aid of the ship and had sent back to the port all the steam-pumps and wrecking apparatus he had employed in his endeavors to save the ship as well as the cargo, and had, in fact, decided to abandon the ship as a total loss, and left her in charge of the agent of her underwriters.

Prior to that decision the cargo, except a few remnants of small value, subsequently found in the lower hold, had been discharged into lighters and transported to the place of destination, and had been delivered into the possession of the consignees.

Having saved the cargo, and finding that further efforts to save the ship with the means at his command were fruitless, he relinquished his endeavors and abandoned the undertaking.

Such are the undisputed facts of the case, and, under the circumstances, it is not possible to hold that the ship, as subsequently got off, was, as matter of fact, saved by a continuation of the same series of measures as those by which the cargo was saved.

Complete separation had taken place between the cargo and the

ship, and the ship was no longer bound to the cargo nor the cargo to the ship.

Undoubtedly the doctrine of general average contribution is deeply founded in the principles of equity and natural justice, but it is not believed that any decided case can be found where the liability to such contribution has been pushed to such an extent as that assumed by the plaintiffs.—(Slater v. Rubber Co., 26 Conn. R., 129. Nemick v. Holmes, 25 Penn. St. R., 371.)

First case cited for the plaintiffs is that of Bevan v. U. S. Bank, 4 Whar., 301, which is the strongest reported case in their favor. Plaintiffs were the owners of the vessel, and the defendants were the owners of a certain quantity of specie, which constituted a part of the cargo. Voyage was from New Orleans to Philadelphia; and the vessel was stranded in Delaware bay in a situation of imminent peril. Statement of the case shows that the specie was among the first articles landed, and it was immediately sent over land to the port of destination, and on the following day was delivered to the defendants. Eight weeks afterwards, the vessel reached the same port in safety with the remainder of the cargo, which had been discharged into lighters and was afterwards reshipped. Supreme court of Pennsylvania held that the defendants were liable to contribute in general average to the charges and expenses incurred subsequently to the landing of the specie.

Much stress is laid, in the opinion of the court, upon the fact that the vessel and the residue of the cargo left on board, were subsequently brought into port by the extraordinary exertions of the master, and if the conclusion can be sustained at all, it must be upon the ground that the whole adventure was saved by a continuous series of measures, prosecuted by the master as the agent of all concerned, which commenced with the saving of the specie, and ended with the saving of the vessel and the residue of the cargo. Stranding in that case was outside of the harbor of the port of destination, and there was no abandonment of the vessel, nor any suspension in the endeavors of the master to save the entire adventure. But the statement of the case shows that the master and mariners remained on board, and that they saved the ship, and having returned the residue of the cargo to the ship, the same was duly transported to the place of destination.—Lewis v Williams, 1 Hall S. C., 436. Gray v. Waln., 2 S. & R., 239.) Standard text writers have doubted the correctness of that decision; but it is unnecessary to determine the question at the present time, as it is clearly distinguishable from the case before the court.—(1 Pars. M. L. 326. 2 Phil. on Ins., sec. 1,407.)

Second case cited is that of Bedford Com. Ins. Co. v. Parker et al., 2 Pick., 1, which can scarcely be reconciled with the preceding case: Insurers of the ship were the plaintiffs, and the defendants were the owners of the cargo. She was stranded nine miles from the port of destination. Part of the cargo was saved by men employed by the owners of

the same, at their own expense. Other parts of the same were subsequently saved by the underwriters of the ship ; and it appears that at one time the latter had a hundred men employed in efforts to save the cargo, and the sails and rigging of the vessel. They afterwards entered into a contract with a third party, and agreed to pay a certain sum if he would save the ship and the residue of the cargo.

Reported facts show that the contractor ultimately succeeded, and brought the ship and such part of the cargo as remained on board, safely into the harbor ; and the court held, and well held, that only that part of the cargo which was on board when the contract was made, was liable to contribute in general average to pay the amount as stipulated in the contract. Clear inference, from the statement of the case, is, that the master had abandoned the ship, and that he had no participation in the previous endeavors to save the cargo. Decision was, that everything which is saved in such a case, by common expense and labor, shall contribute to pay that expense in proportion to its value ; but the court decided that the part of the cargo taken from the vessel by the owners, before the contract was made, was not saved by the successful efforts of the contracting party, and there can be no doubt that the decision was correct.—(Col. Ins. Co. v. Ashby, 13 Pet., 331.)

Earliest case upon the subject is that of Shepherd v. Wright, Show. P. C., 28, which was an appeal from a decree in the court of chancery. Appellants shipped a part of the cargo, and were the owners of the ship, and the residue of the cargo belonged to the respondents. Ship sailed from Messina, bound to London, and on the voyage, she was chased by an armed vessel into Malaga. Advised of the danger, the factor of the ship sent lighters to the master, to save what he could of the cargo ; and as the goods of the respondents were silks, they were first carried on shore. Night came, and the armed vessel left, and as the danger no longer continued, the master forbore to land any more of the goods. Six days afterwards the armed vessel returned, and captured the ship and the goods on board, belonging to the appellants.

They brought the bill of complaint against the respondents, to compel contribution ; but the chancellor dismissed the bill of complaint, and the decree was affirmed in the House of Lords. Ground of the decree was, that the appellants' loss did not contribute to the preservation of the respondents' shipment. Whole adventure was saved from the first peril, and the shipment of respondents was not exposed to the second, by which the ship and the appellants' goods were lost. Evidently the case was rightly decided, and it is perfectly consistent with the views herein already expressed.—(Ben. & Stev. on Av., p 61.)

Third case cited by the plaintiffs is that of Nelson v. Belmont, 21 N. Y., 38, which has an important bearing upon the question under consideration. Plaintiff in that case being the owner of the ship, claimed general average contribution of the defendant, as the shipper of a certain amount of specie. Intended voyage was from New Orleans to Havre ; but the ship was struck with lightning in the Gulf

Stream, and was obliged to make a port of distress. Unable to extinguish the fire, master signalled a vessel in sight, and accepted assistance. He transferred the specie to the other vessel, and the arrangement was, that the other vessel should accompany the vessel in distress to Charleston; but after arriving in the harbor, and before the vessels reached the wharf, the master took back the specie, and subsequently deposited it in bank. Damage was done to the residue of the cargo by the fire; and the means adopted to extinguish the fire, after the vessel reached the wharf, caused her to sink, and the master was obliged to incur expense to raise the vessel, in order to prosecute the voyage. Judgment of the court of appeals was, that the specie was liable, in general average, for the amount paid for the services of the other vessel, and for the expenses incurred at the port of distress.

Precise doctrine advanced was, that the liability to general average continues until the property has been completely separated from the rest of the cargo, and from the whole adventure, as to leave no community of interest remaining. Majority of the court went farther, and held that if the voyage is not abandoned, and the property, although separated from the rest, is still under the control of the master, and liable to be taken again on board for the purpose of prosecuting the voyage, the common interest remains, and whatever is done for its protection, is done at the common expense. Correctness of that decision cannot be doubted; and yet the question may often arise in practice, whether in a given case the separation is, or is not so complete as to justify the conclusion that no community of interest remains. Close cases may doubtless arise, but it is believed that in general there will not be much difficulty in ascertaining the true line of distinction.

Where a ship was stranded by the perils of the sea, and in order to lighten the vessel, the cargo was discharged and forwarded in another vessel; and subsequently *new measures* were adopted, and additional expenses were incurred in getting the ship off and taking her into port for repairs, it was held that the expenses incurred from the misadventure until the cargo was discharged, constituted a general average, but that the subsequent expenses were particular average, and chargeable only to the ship.—*Job v. Langton*, 6 Ell. & Bl., 779. *M. & P. on Ship.*, (3d ed.) 322.)

Statement of facts shows that it became necessary to cut a channel for the vessel, and employ a steam-tug in order to get the vessel off, and the view of the court was, that the goods had been previously saved by a distinct and *completed operation*, and that afterwards a new operation began for the benefit of the ship owner.

Judgment, in that case, was given by Lord Campbell, and in a subsequent case he repeated and enforced the reasons on which the former judgment rested.—*Moran v. Jones*, 7 Ell & Bl., 532. Voyage, in the last case, was from Liverpool to Callao. Ship was driven on a

bank by a storm, near the port of departure. Cargo was discharged and transported back to the port whence it came, and some days afterwards the ship was got off, taken to the port, and repaired, and again took the cargo on board and proceeded on the voyage; and it was held that the saving of the ship and of the cargo was one continued transaction, and the expenses were general average, to which the ship, freight, and cargo must contribute. Considering that the goods remained under the *control of the master* until the ship was got off, repaired, and was enabled to take the goods on board and prosecute her voyage, it is clear that the decision was correct, and entirely consistent with the previous adjudication.—(MacL. on Ship., 573, 576.)

10. Applying those principles to the present case, we are of opinion that there was no community of interest remaining between the ship and the cargo when the master, as declared in the statement of the case, abandoned the ship, and left her in charge of the agent of the underwriters, after the consignees of the ship had declined to authorize the master to incur any further expense.

Judgment of the circuit court is therefore reversed, and the cause remanded, with directions to issue a new venire.

*True Copy—*

Test D. W. MIDDLETON,

C. S. C. U. S.



# American Shipmasters' Association,

Office, No. 51 Wall Street, (Rooms 23 & 25,)  
New York.

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Previous to the year 1854, attempts had been made to regulate the appointment of masters of merchant vessels in Great Britain, and in that year was passed what is known as the Merchant Shipping Act of 1854. This act requires all masters and officers of merchant vessels to be examined, and to hold certificates, issued in accordance with the provisions of the act, before they can clear a vessel from any English custom-house. Local boards of examination are established in the out-ports, London being the head office, from which all certificates issue, under control of the Board of Trade. A fee of £2 is paid by a master, and proportionately less by subordinate officers. The system is not extended to the British Colonies, though a modification of it is in use in the East Indies. Some mode of examining those who are to have the control of vessels is in operation in Norway, Sweden, Prussia, Germany, France, Spain, Italy and Mexico.

The want of a similar system has been long felt in the United States, and the underwriters have attempted in some measure to supply it by private efforts. In 1860 an organized attempt was made by influential ship-owners, merchants and underwriters, which resulted in the establishment of the "*American Shipmasters' Association*"—an institution chartered by the Legislature of New York, for the purpose of "examining and certifying to the qualification of masters and officers of vessels." The plan met with very general favor, and the Association is now permanently established.

To shipmasters and officers it commends itself more strongly, if possible, than the ship-owner, merchant, or underwriter, as it tends to elevate their moral character and professional capacity, and aims especially to protect *worthy* and *well qualified officers* from the competition of the unworthy. The college graduate is justly proud of

his diploma—the *true* seaman must feel greater pride in the possession of a certificate of competency to assume responsibilities which call for the highest qualifications with which man is gifted. It is also a current recommendation of his efficiency and skill all over the world. And when we reflect for a moment on the exalted position of the shipmaster, its dignity and responsibility, can we wonder that he who holds this testimonial of efficiency, should be preferred to one less fortunate? There is probably no member of society from whom more is expected and demanded; vast and momentous interests are entrusted to his care, and to him is committed a wide discretion. Not only is the whole property of the vessel, her cargo, and her earnings within the master's power, and its safety dependent upon his honesty, his prudence, and energy, but the very lives of the crew and passengers hang as it were on his experience and watchfulness.

He is often made the agent of the owners of cargo, and entrusted with its care and disposal in distant ports, uncontrolled by those checks and safeguards which usually surround agents. And to a very large extent, the whole success of the voyage and the undertaking depends upon his judgment and decision. His ability and faithfulness, therefore, need to be undoubted, for so much depends on his judgment and determination that a wrong step is easily taken.

To the lawyer, we entrust the safety of our property; to the physician, life and limb; but the shipmaster has charge of all these (whether for himself, his owners, underwriters, or passengers), liable to sudden and critical dangers, to be met at once and averted by his nerve and judgment. No member of society, therefore, is worthy of greater respect than the accomplished shipmaster, and proud indeed must he be who is fortunate enough to possess the diploma of merit, awarded by the "*American Shipmasters' Association.*" An institution, the Managers, Council, and Officers of which consist of the most eminent merchants, shipowners and underwriters in the country.

The institution has upon its published register about four thousand five hundred names, and on the list are to be found very many of those who have taken the highest rank as shipmasters. It proved of

important service to the government during the war, and its numbers were well represented in the ranks of our volunteer navy.

Applicants for a certificate of the Shipmasters' Association are examined, by competent persons, in seamanship and navigation, and the reports submitted to a council of experienced shipmasters. Each commission issued bears a number, which is not changed, and this is used as a signal somewhat upon the system adopted in the commercial code, or simply by exhibiting a blue flag with red border on which the number of the master's commission appears. A book or register is printed, which gives every number, the name corresponding to it, and the name of the vessel to which the holder of each commission is attached. Thus at sea, as far as the flag can be seen and the number distinguished, an intelligible signal is readily made.

Suitable rooms are provided, called the "The Shipmaster's Rooms," where the officers attend for the necessary duties of the association. These rooms are supplied with newspapers, books, and records relating to marine and commercial intelligence.

The following constitutes the Board, together with the rules, &c., of the association.

## OFFICERS.

PRESIDENT,  
JOHN D. JONES.

VICE-PRESIDENT,  
CAPT. EZRA NYE.

TREASURER,  
DANIEL DRAKE SMITH.

SECRETARY,  
ISAAC H. UPTON.

## COUNCIL.

CAPT. EZRA NYE,  
CAPT. W. C. THOMPSON,

CAPT. ROBERT L. TAYLOR.  
CAPT. KENNEY COUILLARD,

CAPT. AMBROSE SNOW.

## COMMITTEE ON LOSSES.

CAPT. WM. C. THOMPSON,

CAPT. I. H. UPTON.

EXAMINER IN NAUTICAL SCIENCES,  
B. A. SHELDON, A. M.

EXAMINER IN SEAMANSHIP  
CAPT. W. W. STORY.

CAPT. TOWNSEND JONES.

(ORGANIZED, 1861—CHARTERED, 1862.)

This Association has been in successful operation over four years, the register of commissions now numbering over 4,000 masters and officers, of approved standing.

It was organized with a view to the improvement of the American Mercantile Marine service, and the greater security of Life and Property at sea, also to elevate the professional capacity and moral character of seamen, by the encouragement of worthy and qualified mariners.

Under the direction of a Council of experienced Ship-masters and Ship-owners, commissions are issued for such offices as the applicant may be qualified to fill with credit in the Mercantile Marine Service. These commissions serve as a recommendation to ship-owners, and are encouraged by underwriters in making favorable insurances on vessels and cargoes under the command of officers holding them.

The Rules of the Council require the application for commissions to be made in writing, and particularize the native place, age, length of sea service, and principal voyages of the applicant; referring to persons by whom he has been employed. Testimonials as to character and habits are also required. These statements, answers, and written recommendations are preserved for future reference.

Misstatements made by the applicant will be a sufficient reason for refusing a commission, or for revoking one, if granted.

All commissions issued reserve the right of revocation, and are to be signed and receipted for with this condition. They will continue in force for one year; but may be extended at the option of the Association.

The qualifications for a Commission are—experience as a mariner and as a navigator; skill in the sailing and management of a vessel; good character and habits, particularly as to temperance; full age of twenty-one years, and six years' experience at sea.

If an applicant for a Commission as Master has only served in a fore-and-aft rigged vessel, and is not familiar with the management of a square-rigged vessel, he may obtain a Commission on which the words "Fore-and-Aft" will appear.

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N. B.—Holders of Commissions are requested to send to the Secretary the name of the vessel to which they may be attached, when any change occurs after receiving a Commission.

The word *Extra* may be placed on the Commission in case of particular qualifications.

Applicants for *Extra* Commissions shall also possess competent knowledge of nautical science to determine the longitude by observation, the proof of which shall be an examination, under prescribed Rules.

The Commissions provide for presentation at the office for renewal by endorsement, at the expiration of one year from the date thereof. If the holder should be at sea at that time, then on his return to New York; *provided*, that, if absent for more than one year, he can send his address, with the name of the vessel he may then be commanding, &c., to the Secretary, when a special endorsement may be sent him.

All Commissions granted by this Association may be revoked, for reasons satisfactory to a majority of the Councils; for cruel or inhuman treatment of the crew or passengers; for breach of trust or barratry; for unskillfulness or misconduct, involving unnecessary damage or loss to vessel or cargo; or for shipwreck, not satisfactorily accounted for; either by notice to the holder thereof, or by advertisement in the newspapers, or in any other way which the Association may direct; and this power is to be reserved in any Commission which may be issued.

On application of the holder, in writing, a revoked Commission may be reconsidered. If, upon examination by the Council, or other persons under their directions, the applicant should prove satisfactory, a new Commission may be issued to him; but no new Commission shall be granted after a third revocation.

The Secretary will keep a register, with the address of officers commissioned by the Association, desiring employment; and a list, with the address, of persons desiring officers; and will furnish any commissioned officer with the name and address of parties desiring officers of the grade of the applicant, if such are on the books.

Subscribers who have paid the annual fees will, on application, be furnished with the names and addresses of officers desiring employment.

Merchants, ship-owners, and ship-masters, becoming subscribers by the payment of five dollars annual fee, will be entitled to the

privileges of the Association, in accordance with the Rules thereof

Printed reports of officers in good standing, and holding Commissions of the Association, will be furnished to the subscribers and officers holding Commissions.

The good character and standing of those holding Commissions of this Association, and their immunity from disaster, has induced the Underwriters to discriminate, in some cases, in their premiums, in favor of vessels and cargoes under the command of masters holding Commissions, as will be seen by the following advertisement:—

The undersigned Insurance Companies concur in charging not less than one-half of one per cent. more premium on passage risks between United States ports and the West India Islands and Bermuda, by sailing vessels under command of masters not having certificates from the American Ship-masters' Association, than by vessels commanded by masters having such certificates. To take effect, on outward risks, September 15th, and on homeward risks, October 1st, proximo:

NEW YORK, August, 1862.

ATLANTIC MUTUAL INS. CO.,  
by J. D. JONES, President.

SUN MUTUAL INS. CO.,  
by M. H. GRINNELL, President.

GREAT WESTERN INS. CO.,  
by RICHARD LATIERS, President.

MERCANTILE MUTUAL INS. CO.,  
by ELLWOOD WALTER, President.

COMMERCIAL MUTUAL INS. CO.,  
by DANIEL DRAKE SMITH, President.

WASHINGTON INS. CO., by A. W. WHIPPLE, Vice-President.

NEW YORK MUTUAL INS. CO.,  
by JOHN H. LYELL, Vice-President.

UNION MUTUAL INS. CO.,  
by F. S. LATHROP, President.

ORIENT MUTUAL INS. CO.,  
by LEOPOLD BIERWIRTH, President.

PACIFIC MUTUAL INS. CO.,  
by ALFRED EDWARDS, President.

NEPTUNE INS. CO.

by J. P. TAFFAN, President.

Applications for Commissions may be filed with the Secretary, at the office, No. 51 Wall Street, Room 25, where forms are provided for that purpose.

I. H. UPTON,

*Secretary.*

N U M E R I C A L   L I S T  
O F  
**Masters and Officers in the Merchant Service,  
WHO HAVE APPLIED FOR COMMISSIONS FROM  
The American Shipmasters' Association  
WITH THE NUMBER OF EACH APPLICATION.**

In no case will the number be changed or used a second time, so that the number will always indicate the name of the holder of the Commission.

These numbers may be used as signals at sea with great facility, and for this purpose holders of Commissions may procure copies of the List on application to

New York, Jan., 1866.

I. H. UPTON, Secretary.

|                             |                              |
|-----------------------------|------------------------------|
| 1. Capt. Isaiah Pratt.      | 43. Capt. Thaddeus Brown.    |
| 2. " Henry R. Hovey.        | 44. " George A. Scales.      |
| 3. " George E. Welch.       | 45. " Anthony S. McGrathlin. |
| 4. " James R. Malcolm.      | 46. Mate William E. Bridges. |
| 5. " Robert E. Lyttle.      | 47. Capt. Laust E. Degen.    |
| 6. Mate George Taylor.      | 48. " John H. Stirling.      |
| 7. Capt. William Smith.     | 49. " James H. Buxton.       |
| 8. " John Pidgeon.          | 50. " Albert Cook.           |
| 9. Capt. Wm. D. Urann.      | 51. " Henry Babcock.         |
| 10. " Thos. W. Wilson.      | 52. " William Hunt.          |
| 11. " Benj. D. Manton.      | 53. " Jerome B. Rogers.      |
| 12. " James Durie.          | 54. " Josiah Pierson.        |
| 13. " Rufus G. F. Candage.  | 55. " William J. Axworthy.   |
| 14. " Jonas S. Higbee.      | 56. " Alex. Murray Smith.    |
| 15. " William Knapp.        | 57. " Milford Rogers.        |
| 16. " George W. Browne.     | 58. " Chas. F. W. Behm.      |
| 17. " Joe. L. Winton.       | 59. " George R. Schnuck.     |
| 18. " John G. Dorry.        | 60. " Nicholas Kirby, Jr.    |
| 19. " Thomas Maroni.        | 61. " Silas P. Martin.       |
| 20. " Geo. W. Ward.         | 62. " Henry E. Williams.     |
| 21. " Thomas G. Hallock.    | 63. " Isaac D. Scyburl.      |
| 22. " Reuben F. Harford.    | 64. " William M. Blye.       |
| 23. " Wm. E. Welch.         | 65. " Samuel A. Swinnerton.  |
| 24. " Alexander Scudder.    | 66. " Jas. Walter Connor.    |
| 25. " Lemuel Gage.          | 67. " John Johnston.         |
| 26. " Henry L. Sturges.     | 68. " Washington Godfrey.    |
| 27. " John West.            | 69. " Thomas G. Young.       |
| 28. " Leaven Lawrence.      | 70. " William D. Clifford.   |
| 29. " Charles Clark.        | 71. " Henry B. Horton.       |
| 30. " Thomas Leach.         | 72. " David P. Heath.        |
| 31. " Joseph B. Jordan.     | 73. " Wm. Wright.            |
| 32. " Jessie P. Rogers.     | 74. " Charles S. May.        |
| 33. " Ferdinand Crocker.    | 75. Mate Arthur J. Hider.    |
| 34. " Luke B. Chase.        | 76. Capt. William Brooks.    |
| 35. " William Jones.        | 77. " Lyman Wells.           |
| 36. " Edmund B. Mallett.    | 78. " Jabez Pratt.           |
| 37. " William C. Underhill. | 79. " George A. Trundy.      |
| 38. " Allen Baxter.         | 80. " William Allen.         |
| 39. " Bradford S. Norris.   | 81. " Henry Dennison.        |
| 40. " Josiah Morgan Lord.   | 82. " Miller H. Johnson.     |
| 41. " Thomas E. Smith.      | 83. " Henry L. Howland.      |
| 42. Mate Donald S. Mackay.  | 84. " Robert Dockendorff     |

Note.—All with a \* prefixed are deceased.

## APPENDIX.

|      |       |                          |      |       |                       |
|------|-------|--------------------------|------|-------|-----------------------|
| 85.  | Capt. | George A. Dearborn.      | 145. | Capt. | Charles Woodward.     |
| 86.  | "     | John Caleb.              | 146. | "     | Raymond Rabudan.      |
| 87.  | "     | Charles C. Sisson.       | 147. | "     | David Souper.         |
| 88.  | "     | James H. Rogers.         | 148. | "     | Wm. H. Biley.         |
| 89.  | "     | James C. Young.          | 149. | "     | Byron G. Pettingill.  |
| 90.  | "     | John E. Williams.        | 150. | "     | Patrick M. Ward.      |
| 91.  | "     | Richard Olmsted.         | 151. | "     | John P. Jones.        |
| 92.  | "     | Orlando Bassett.         | 152. | "     | Horatio Day.          |
| 93.  | "     | George A. McMunn.        | 153. | "     | Charles Hutchinson.   |
| 94.  | "     | William M. Post.         | 154. | "     | Crippin Chapman.      |
| 95.  | "     | John C. Whittlesey.      | 155. | Mate  | Samuel Harding, Jr.   |
| 96.  | "     | William H. Russell.      | 156. | Capt. | David K. Welden.      |
| 97.  | "     | Daniel B. Hodgson.       | 157. | "     | Edward E. Vail.       |
| 98.  | "     | Thomas Edwards.          | 158. | "     | James A. Hoffses.     |
| 99.  | "     | Thomas F. Freeman.       | 159. | "     | William H. Morey.     |
| 100. | "     | Francis P. Allen.        | 160. | "     | Thomas Dixon.         |
| 101. | "     | Fred. J. Gover.          | 161. | "     | Nathan F. Larrabee.   |
| 102. | "     | John E. Wells.           | 162. | "     | Hale Knight.          |
| 103. | "     | John M. Boyson.          | 163. | "     | Ebenezer E. Graves.   |
| 104. | "     | Mercator Cooper.         | 164. | "     | Charles Mills.        |
| 105. | "     | James M. Green.          | 165. | "     | Charles W. Burlett.   |
| 106. | "     | Thomas H. Boyle.         | 166. | "     | Rethuel G. Handy.     |
| 107. | "     | George Scott.            | 167. | "     | Thomas E. Wolfe.      |
| 108. | "     | John Robert Dewar.       | 168. | "     | Joshua H. Dill.       |
| 109. | "     | Martyn S. Harris.        | 169. | "     | Thomas Hughes.        |
| 110. | "     | Richard H. Ellis.        | 170. | Mate  | Leopold Beyersdorff.  |
| 111. | "     | Henry F. Coffin.         | 171. | Capt. | Peter E. Rowland.     |
| 112. | "     | Rowland F. Coffin.       | 172. | Mate  | Daniel D. Parsons.    |
| 113. | "     | Joshua P. Boutelle.      | 173. | Capt. | George A. Bailey.     |
| 114. | "     | George C. Stouffer.      | 174. | "     | Welcome Gilkey.       |
| 115. | "     | Gideon S. Stinson.       | 175. | "     | Edward B. Woodward.   |
| 116. | "     | Albert Webster Lavender. | 176. | "     | Gideon T. Emery.      |
| 117. | Mate  | Jesse Ward.              | 177. | "     | John R. Dickinson.    |
| 118. | Capt. | Edward P. Johnson.       | 178. | "     | James H. Chamberlain. |
| 119. | "     | George Gilfillan.        | 179. | "     | Samuel Loveland.      |
| 120. | "     | Herman Lowenstein.       | 180. | "     | Marshall M. Wells.    |
| 121. | "     | Ezra Lee Robbins.        | 181. | "     | James W. Yates.       |
| 122. | "     | John D. Ingraham.        | 182. | "     | Enoch Wood Peabody.   |
| 123. | "     | Sylvester Mattison.      | 183. | "     | John P. Sundberg.     |
| 124. | "     | Orrin Sellew.            | 184. | "     | Colin C. Campbell.    |
| 125. | "     | Samuel Cobb.             | 185. | "     | Stephen Whitman.      |
| 126. | "     | David Jackson.           | 186. | "     | Charles Folsom.       |
| 127. | "     | John J. Rogers.          | 187. | "     | Joshua Couillard.     |
| 128. | "     | Wm. H. Parsons.          | 188. | "     | William Cushing.      |
| 129. | "     | Henry W. Washburn.       | 189. | "     | James W. Lindsay.     |
| 130. | "     | Richard Harlow.          | 190. | "     | Samuel Foss.          |
| 131. | "     | George Moore.            | 191. | "     | Charles H. Frisbie.   |
| 132. | "     | David G. Cole.           | 192. | "     | Wm. H. C. Drummond.   |
| 133. | "     | John R. Hurlbut.         | 193. | "     | William L. Brown.     |
| 134. | "     | John H. Avery.           | 194. | "     | Ezra B. Freeman.      |
| 135. | "     | William C. Staples.      | 195. | "     | Frederick Gorham.     |
| 136. | "     | Lewis W. Pennington.     | 196. | "     | John L. Bryant.       |
| 137. | "     | John Towart.             | 197. | "     | John Anderson.        |
| 138. | "     | Francis Patterson.       | 198. | "     | Abraham N. Gould.     |
| 139. | "     | Barnabas Sherman.        | 199. | "     | Wm. S. Frost.         |
| 140. | "     | Samuel W. Mather.        | 200. | "     | Leonard W. Horton.    |
| 141. | "     | William Hanson.          | 201. | "     | John N. Gilt.         |
| 142. | "     | John H. Shippy.          | 202. | "     | William Brand.        |
| 143. | "     | William G. Jones.        | 203. | "     | Wm. K. Bradish.       |
| 144. | "     | Charles H. Baldwin.      | 204. | "     | Daniel S. Collin.     |

|                            |                              |
|----------------------------|------------------------------|
| 1. Capt. John C. Almy, Jr. | 265. Capt. Clement P. Jayne. |
| " Sidney Ashby.            | 266. " William R. Gardner.   |
| " John Pennington.         | 267. " Charles Scandella.    |
| " Warren Ray.              | 268. " Michael Conklin.      |
| " Henry L. Townsend.       | 269. " Henry L. Hepburn.     |
| " Ambrose Child.           | 270. " Simeon S. Hawkins.    |
| " Melville Oliphant.       | 271. " William McGloin.      |
| " James S. Rogers.         | 272. " Fred. B. Langston.    |
| " Joseph W. Lawrence.      | 273. " Charles D. Simes.     |
| " Joseph G. Woodrige.      | 274. " Joseph W. H. Purdy.   |
| " Phineas P. Carver.       | 275. " John Landenkin.       |
| " Benjamin H. Smith.       | 276. " Frederick G. Lothrop. |
| " Wm. B. Hutchings.        | 277. " John A. Bisley.       |
| " Wm. Lester.              | 278. " Philip R. Stanhope.   |
| " William A. Jones.        | 279. " Henry F. Salter.      |
| " Isaac Sofield.           | 280. " Charles H. Townsend.  |
| " Stephen E. Glover.       | 281. " Stephen M. Warren.    |
| " James Crocker.           | 282. " Niel P. Schibye.      |
| " Robert B. Smith.         | 283. " Theodore Perry.       |
| " John Porter.             | 284. " John Sweeney.         |
| " Warren Downey.           | 285. " Lorin H. Botsford.    |
| " Joseph T. Soule.         | 286. " Chas. A. Pendleton.   |
| " James J. Humphreys.      | 287. " William Sleeper.      |
| " John R. Kelly.           | 288. " Knut Favorin.         |
| " Leopold Cluver.          | 289. " John F. Nickels.      |
| " Christian H. W. Petrus.  | 290. " Samuel G. Fairchild.  |
| " Levi Goodwin.            | 291. " John Scott.           |
| 1. Mate Theodore A. Jones. | 292. " Aug. C. Pettingill.   |
| Capt. Charles G. Baker     | 293. " Samuel H. Suggett,    |
| " James M. Jenkins.        | 294. " Anthony Chase.        |
| " James S. Rees.           | 295. " Henry Lessling.       |
| " Daniel H. Truman.        | 296. " Alfred B. Lowber.     |
| " Herbert M. Hayden.       | 297. " James H. Parker.      |
| " Anthony Thacher.         | 298. " William W. Morris.    |
| " Seth Doane.              | 299. " Frederick W. Thrane.  |
| " Alfred Doane.            | 300. " Henry W. Green.       |
| " David Forbes.            | 301. " Thomas D. Davis,      |
| " John W. Simmons.         | 302. " John E. Harmon.       |
| " Edward Whitehurst.       | 303. " John J. Reagans.      |
| " Bernard A. Joesler.      | 304. " James Chase.          |
| " Alphonse D. Kaye.        | 305. " James Bryant.         |
| " John P. Roberts.         | 306. " Martin V. B. Amidon.  |
| " Charles Morteau.         | 307. " Merit R. Greene.      |
| " Isaac Dixon.             | 308. " Robert H. Drummond.   |
| " George Dewhurst.         | 309. " John W. Nickerson.    |
| " Freeman Crosby.          | 310. " Wm. P. Gibbs.         |
| " Thomas H. Gifford.       | 311. " Christopher W. Lloyd. |
| " Isaiah Fournier.         | 312. " Henry E. Asmus.       |
| " Thomas H. Davis.         | 313. " Albert Zerega.        |
| " Melancthon B. Woolsey.   | 314. " Daniel P. Caulkins.   |
| " Benjamin Atkins.         | 315. " Arthur C. Berry.      |
| " James B. Bell.           | 316. " Albert W. Shaw.       |
| " Wm. M. Terry.            | 317. " Edmund W. Holmes.     |
| " John A. Darling.         | 318. " George R. Nickerson.  |
| " Alfred Waycott.          | 319. " Jerome B. Hildreth.   |
| " Edward Hawkins.          | 320. " George W. Crowell.    |
| " Jedediah W. Hawkins.     | 321. " Philip Bennett.       |
| " Charles Petersou.        | 322. " Charles H. Corser.    |
| " William C. Ross.         | 323. " Horace B. Soule.      |
| " Isaac B. Pinkham.        | 324. " Ellsworth A. Luca.    |

|            |                        |            |                          |
|------------|------------------------|------------|--------------------------|
| 825. Capt. | William B. Stoddard    | 885. Capt. | Abraham Simmons          |
| 826. "     | Fred. A. G. Bacon.     | 886. "     | Abial McFarland.         |
| 827. "     | James Shoppy.          | 887. "     | Sebastian Ellis.         |
| 828. "     | Edward K. Warren.      | 888. "     | Mark S. Chase.           |
| 829. "     | Andrew J. Pettingill.  | 889. "     | Frederick W. Spencer.    |
| 830. "     | Chauncey T. Botsford.  | 890. "     | George Hagar.            |
| 831. "     | Samuel P. Patten.      | 891. "     | Lewis W. Gilley.         |
| 832. "     | John Stirling.         | 892. "     | Simon W. Cooper.         |
| 833. "     | Jacob Miller.          | 893. "     | John R. Atkinson.        |
| 834. "     | Thomas H. Morton.      | 894. "     | Kendall Buxton.          |
| 835. "     | Joseph H. Arnold.      | 895. "     | Patrick H. Conway.       |
| 836. "     | Joseph W. Hathorn.     | 896. "     | Edward Johnson.          |
| 837. "     | Richard Beaston.       | 897. "     | James S. Dillingham, Jr. |
| 838. "     | John Miller.           | 898. "     | Alexander Waugh.         |
| 839. "     | Joseph L. Denison.     | 899. "     | Benj. F. Noyes.          |
| 840. "     | John S. Ingraham.      | 900. "     | John Halsey.             |
| 841. "     | Clark Delano.          | 401. "     | Samuel C. Magna.         |
| 842. "     | Samuel T. Donnell.     | 402. "     | Forman D. Rogers.        |
| 843. "     | William L. Flitner.    | 403. "     | William C. Gifford.      |
| 844. "     | Joseph A. Wallace.     | 404. "     | Joseph Brereton.         |
| 845. "     | George B. Almy.        | 405. Mate  | James N. Vanboskirk.     |
| 846. "     | Charles H. Matthews.   | 406. Capt. | George Patterson.        |
| 847. "     | Theodore B. Du Bois.   | 407. "     | John M. Gillespie.       |
| 848. "     | James C. Stafford.     | 408. "     | Francis Jackson.         |
| 849. "     | Albert G. Jones.       | 409. "     | Charles Swendson.        |
| 850. "     | Lewis P. Cook.         | 410. Mate  | David M. Hawthorne.      |
| 851. "     | William D. Gregory.    | 411. Capt. | William F. G. Ellis.     |
| 852. "     | Charles Wyman.         | 412. "     | William Chatfield.       |
| 853. "     | Artemus W. Watts.      | 413. "     | John P. Wyatt.           |
| 854. "     | Richard T. Hartshorne. | 414. "     | William Stinson.         |
| 855. "     | Samuel S. Thomas.      | 415. "     | Cornelius C. Ellis.      |
| 856. "     | Horatio N. Plummer.    | 416. "     | Charles C. Packer.       |
| 857. "     | James C. Blizzard.     | 417. "     | Fessenden Chase.         |
| 858. "     | Isaac K. Henderson.    | 418. "     | William B. Hilton.       |
| 859. "     | Gerardus H. Schreuder. | 419. "     | Ebenezer Burgess.        |
| 860. "     | Wm. W. Urquhart.       | 420. "     | Robert K. Robinson.      |
| 861. "     | Daniel M. Marshall.    | 421. "     | Robert G. Watt.          |
| 862. "     | Alden Plummer.         | 422. "     | Robert B. Snow.          |
| 863. "     | John Hoxie.            | 423. "     | Edward K. Mooney.        |
| 864. "     | Samuel Kennedy.        | 424. "     | William K. Waggoner.     |
| 865. "     | George H. Stevens.     | 425. "     | John Bahrs.              |
| 866. "     | William Freeman, Jr.   | 426. "     | James H. Kelleran.       |
| 867. "     | George Freeman.        | 427. "     | Miles S. Gates.          |
| 868. "     | Henry S. Ray.          | 428. "     | William G. Shapley.      |
| 869. "     | Selden C. Warner.      | 429. "     | Austin Williams.         |
| 870. "     | Edward A. Terrell.     | 430. "     | Joseph H. Stetson.       |
| 871. "     | David Grant.           | 431. "     | Henry R. Otis.           |
| 872. "     | Wm. C. Rogers.         | 432. "     | Joseph E. Stannard.      |
| 873. "     | Barzillai Sears.       | 433. "     | Samuel P. Crafts.        |
| 874. "     | David Bartlett.        | 434. "     | William Powell.          |
| 875. "     | Benj. A. Folansbee.    | 435. "     | Crosby B. Smith.         |
| 876. "     | William A. Gardner.    | 436. Mate  | Aaron H. Stora.          |
| 877. "     | Frank P. Shannon.      | 437. Capt. | Charles H. Barrott.      |
| 878. "     | Robert Harding.        | 438. "     | George C. Brown.         |
| 879. "     | James A. Tyson.        | 439. "     | Egbert T. Sewall.        |
| 880. "     | Wm. H. Chambers.       | 440. "     | Thomas S. Ellis.         |
| 881. Mate  | Frank H. Beers.        | 441. "     | Henry W. Lunt.           |
| 882. Capt. | Wilson McNear.         | 442. "     | Michael Stevenson.       |
| 883. "     | Reuben Merrill.        | 443. "     | Hudson B. Merryman.      |
| 884. "     | Chas. S. Warren.       | 444. "     | Alfred H. Merryman.      |

|          |                       |            |                        |
|----------|-----------------------|------------|------------------------|
| i. Capt. | Elisha F. Sears.      | 505. Capt. | Elanathan P. Hatheway. |
| "        | James M. Miller.      | 506. "     | Samuel H. G. Prentiss. |
| "        | Andrew J. Brower.     | 507. "     | Frederick Oliver.      |
| "        | George N. Simson.     | 508. "     | Daniel Tripp.          |
| "        | Frederick Sherwood.   | 509. "     | Theophilus Bassett.    |
| "        | Charles F. Hoyer      | 510. "     | Henry Applegit.        |
| "        | William Munroe.       | 511. "     | John C. Dutch.         |
| "        | William P. Sigbee.    | 512. "     | James Lawler.          |
| "        | Robert L. Walton.     | 513. "     | James P. Thompson.     |
| "        | John Colman.          | 514. "     | Willard O. Brown.      |
| "        | Henry E. Harding.     | 515. "     | William J. Rogers.     |
| "        | William A. Barnaby.   | 516. "     | Henry Housdon.         |
| "        | Eyland Upton.         | 517. "     | William Symonds.       |
| "        | Israel S. Bunce.      | 518. "     | Orsuna O. Laraway.     |
| "        | Fred. R. Meyer.       | 519. "     | John Curtis.           |
| "        | Jacob W. Hinckley.    | 520. "     | Henry C. Hungerford.   |
| "        | James D. Keith.       | 521. "     | James T. Maloney.      |
| "        | John B. Bowditch.     | 522. "     | Joseph J. Child.       |
| "        | Ebenezer M. Lawry.    | 523. "     | John C. Bush.          |
| "        | Richard Hepburn.      | 524. "     | John F. Marschalk.     |
| "        | Charles Knowles.      | 525. "     | Hugh Morrison.         |
| "        | Sam Easterbrook.      | 526. "     | Charles Collins.       |
| "        | Williams J. Perkins.  | 527. "     | Amasa M. Loveland.     |
| "        | Joseph Small.         | 528. "     | Horacio Nelson.        |
| "        | Charles H. Brown.     | 529. "     | Jeremiah N. Sawyer.    |
| "        | Lorenzo S. Pike.      | 530. "     | James N. White.        |
| "        | Frank B. Melcher.     | 531. "     | Job Potter.            |
| "        | Albert H. Comstock.   | 532. "     | George E. Hawkins.     |
| "        | Frederick W. Hansen.  | 533. "     | Edward Abeel.          |
| "        | William K. Foreman.   | 534. "     | Thomas McCullough.     |
| "        | Harvey Mills.         | 535. "     | Robert Giveen.         |
| "        | Sheldon E. Hubbard.   | 536. "     | Benjamin Jones.        |
| Mate     | Wm. P. Mason.         | 537. Mate  | Nicholas S. Dixon.     |
| Capt.    | James H. Creevy.      | 538. Capt. | Samuel R. Curwen.      |
| "        | Charles G. Crocker.   | 539. "     | William G. Allen.      |
| "        | George Linnaeae.      | 540. "     | Francis J. Chase.      |
| Mate     | William Henry.        | 541. "     | Charles E. Coffin.     |
| Capt.    | Charles Post.         | 542. "     | Benj. J. H. Trask.     |
| "        | John S. Taylor.       | 543. "     | Gustavus D. S. Trask.  |
| "        | Francis J. Brenton.   | 544. "     | Thomas B. Tucker Jr.   |
| "        | John W. Bennett.      | 545. "     | Albert P. Foster.      |
| "        | Elijah Ross.          | 546. "     | Augustus F. Savin.     |
| "        | John S. Kilby.        | 547. "     | George Waite.          |
| "        | William A. Thompson.  | 548. "     | Abraham E. Christian.  |
| "        | John G. Wilson.       | 549. "     | John P. Wilkinson.     |
| "        | William Martin.       | 550. "     | Richard H. Moore.      |
| "        | William J. Stafford.  | 551. "     | William S. Johnson.    |
| "        | John H. Child.        | 552. "     | William R. Irving.     |
| Mate     | Julius W. Sontag.     | 553. "     | Daniel S. Rogers.      |
| Capt.    | William H. Anderson.  | 554. "     | Ezekiel D. Percy.      |
| "        | Frank S. Swanton.     | 555. "     | Joseph G. Lewis.       |
| "        | Thomas Shaw.          | 556. "     | John J. N. Webber.     |
| "        | George W. S. Grueber. | 557. "     | Wilder F. Cooper.      |
| "        | William D. Tucker.    | 558. "     | Peter C. Mockler.      |
| "        | John B. Chilts.       | 559. "     | Matthew Mockler.       |
| "        | Thomas W. Peel.       | 560. "     | Dunbar Henderson.      |
| "        | Peter H. Whiteberry.  | 561. "     | Jacob G. Pierce.       |
| "        | Jeremiah Hooper.      | 562. "     | Richard Wilkinson.     |
| "        | John F. French.       | 563. "     | George F. Church.      |
| "        | John S. Crowell.      | 564. "     | Wm. J. Van Namee.      |

## APPENDIX.

|      |       |                         |      |       |                        |
|------|-------|-------------------------|------|-------|------------------------|
| 665. | Capt. | Tyler Parsons.          | 625. | Capt. | Diedrich Sanneman.     |
| 666. | "     | Calvin G. Worth.        | 626. | "     | John O. Roney.         |
| 667. | "     | Amos C. Pung.           | 627. | "     | George N. Hood.        |
| 668. | "     | John A. Morris.         | 628. | "     | John N. Brown.         |
| 669. | "     | Richard Luce.           | 629. | "     | Ashman Clough.         |
| 670. | "     | William G. Furber.      | 630. | "     | Edward Young.          |
| 671. | "     | Charles Palmer.         | 631. | "     | William R. Bell.       |
| 672. | "     | Samuel L. Spencer.      | 632. | Mate  | William J. Armstrong.  |
| 673. | "     | George W. Gorham.       | 633. | Capt. | Cornelius W. Millikin. |
| 674. | "     | David A. Bogert.        | 634. | "     | Christopher Crowell.   |
| 675. | "     | Elias H. Birdsall.      | 635. | "     | Freeman Jeffrey.       |
| 676. | "     | Samuel Samuels.         | 636. | "     | Edward Ayers.          |
| 677. | "     | George G. Gilbert.      | 637. | "     | William Coldrey.       |
| 678. | "     | Ephraim Pray.           | 638. | "     | Rufus Lodg.            |
| 679. | "     | Isaac Carver.           | 639. | "     | Theodore Gulbrandson.  |
| 680. | "     | Jeremiah Chadwick.      | 640. | "     | Samuel Young.          |
| 681. | "     | Stephen D. Joy.         | 641. | "     | Miner Tuthill.         |
| 682. | "     | Henry H. McLane.        | 642. | "     | William Morgan.        |
| 683. | "     | George W. Watson.       | 643. | "     | Edward Funk.           |
| 684. | "     | Abraham H. Wood.        | 644. | "     | Alexander R. Barker.   |
| 685. | "     | Robert Cunningham.      | 645. | "     | Ray S. Clarke.         |
| 686. | "     | John J. Rogers.         | 646. | "     | William A. Maine.      |
| 687. | "     | Frank M. Stinson.       | 647. | "     | Alde B. Eldridge.      |
| 688. | "     | Benjamin D. Hurd.       | 648. | "     | Edwin G. Doyle.        |
| 689. | "     | Henry Clay Woodward.    | 649. | "     | James Ainsworth.       |
| 690. | "     | Hugh H. Savage.         | 650. | "     | Thomas D. Kidd.        |
| 691. | "     | Rufus H. Butterfield.   | 651. | "     | Edward R. Fairbanks.   |
| 692. | "     | Wm. E. Phillips.        | 652. | "     | Jonas K. Bartlett.     |
| 693. | "     | Erwin A. Hussey.        | 653. | "     | William T. Johns.      |
| 694. | "     | George S. Hill.         | 654. | "     | George Smith.          |
| 695. | "     | George Bellows.         | 655. | "     | Rich. Calvin Williams. |
| 696. | "     | Moses Hoyt.             | 656. | "     | Shadrach Small, Jr.    |
| 697. | "     | George S. Keller.       | 657. | "     | George I. Murray.      |
| 698. | "     | Charles A. Ranlett, Jr. | 658. | "     | Gamaliel Thomas.       |
| 699. | "     | Charles A. Ranlett, Jr. | 659. | "     | Lemuel Curtis.         |
| 700. | "     | Latham A. Brown.        | 660. | "     | William Grant.         |
| 701. | "     | James Stewart.          | 661. | "     | George F. Tuthill.     |
| 702. | "     | Orington Linekin.       | 662. | "     | James N. Davis.        |
| 703. | "     | Eli Perry.              | 663. | "     | Alexander M. Douglass. |
| 704. | "     | John A. White.          | 664. | "     | Malaga Smith.          |
| 705. | "     | George Sunner.          | 665. | "     | Not used.              |
| 706. | "     | Samuel Macoduck.        | 666. | Mate  | Calvin C. Howes.       |
| 707. | "     | William P. Rogers.      | 667. | Capt. | George I. Sutton.      |
| 708. | "     | Charles E. Jack.        | 668. | "     | John Chadwick.         |
| 709. | "     | Thos. J. Forrest.       | 669. | "     | Nathan I. Dutton.      |
| 710. | "     | Hosmer B. Parmelec.     | 670. | "     | Geo. N. Slocum.        |
| 711. | "     | James Funk.             | 671. | "     | Amaziah R. Conary.     |
| 712. | "     | Christian G. Dill.      | 672. | "     | Morris Osborn.         |
| 713. | "     | Samuel Askins.          | 673. | "     | Henry C. Dearborn.     |
| 714. | "     | Edward Robinson.        | 674. | "     | Warren Bray.           |
| 715. | "     | George Duncan.          | 675. | "     | John E. Wilson.        |
| 716. | "     | Daniel Clark.           | 676. | "     | John J. Wuit.          |
| 717. | "     | Taylor C. Newbury       | 677. | "     | George Hawkins.        |
| 718. | "     | William Hewes.          | 678. | "     | Abm. B. Pierson.       |
| 719. | "     | John W. Coutts.         | 679. | "     | Thomas S. Smyth.       |
| 720. | "     | Harrison Nickerson.     | 680. | "     | John Fraser.           |
| 721. | "     | Alex. M. Heartt.        | 681. | "     | Morgan Gunderson.      |
| 722. | "     | Josiah Newcomb.         | 682. | "     | Chas. A. Bartlett.     |
| 723. | "     | Sainte Croix Redman.    | 683. | "     | Geo. W. Brown.         |
| 724. | "     | George Conway.          | 684. | "     | Henry D. Driver.       |

|       |                       |      |       |                        |
|-------|-----------------------|------|-------|------------------------|
| Capt. | Jos. M. Hume.         | 745. | Capt. | Edward W. Munday.      |
| "     | George W. Nowell.     | 746. | "     | Benjamin F. Pickens.   |
| "     | Freeman F. Percival.  | 747. | "     | Dexter Collamore.      |
| "     | John McCleave.        | 748. | "     | George H. Avery.       |
| "     | Robert Jack.          | 749. | "     | William P. Jones.      |
| "     | Moses Lyons.          | 750. | "     | Ephraim G. Harriman.   |
| "     | George W. Patten.     | 751. | "     | Shephard J. Hulse.     |
| "     | Rufus G. Dearborn.    | 752. | "     | Benj. T. Watlington.   |
| Mate  | Duncan McArthur.      | 753. | "     | Daniel Quig.           |
| Capt. | Gilbert A. Knudson.   | 754. | "     | Edward P. Percival.    |
| "     | Edward Cole.          | 755. | "     | Wm. S. Peacock.        |
| "     | William Newhall, Jr.  | 756. | "     | Geo. W. Brewster.      |
| "     | John Ketcham.         | 757. | "     | Edwin Ross.            |
| "     | John F. Underhill.    | 758. | "     | David Burt.            |
| "     | Harmon C. Orr.        | 759. | "     | Warren Luce.           |
| "     | Thomas L. Masson.     | 760. | "     | George Taylor.         |
| "     | Ephraim P. Loud.      | 761. | "     | Isaac C. Dagget.       |
| "     | Wm. H. Fulford.       | 762. | "     | Charles Browne.        |
| "     | Benj. T. Glover.      | 763. | "     | John Davis.            |
| "     | Almer E. Squires.     | 764. | "     | Eugene F. Price.       |
| "     | John Thompson.        | 765. | "     | Daniel C. Wooster.     |
| "     | Charles H. Baxter.    | 766. | Mate  | John Ross.             |
| "     | William Brown.        | 767. | Capt  | Horace W. Pierce.      |
| "     | James Ed. Cole.       | 768. | "     | John Hays.             |
| "     | Samuel H. Dillard.    | 769. | "     | Henry M. Merrill.      |
| "     | George H. Leinas.     | 770. | "     | Leonard D. Brown.      |
| "     | Atkins R. Nickerson.  | 771. | "     | Thomas Butler.         |
| "     | William Snow.         | 772. | "     | Joseph S. Brewster.    |
| "     | Alfred Hulse.         | 773. | "     | Thomas Stevens.        |
| "     | William I. Todd.      | 774. | "     | William Monk.          |
| "     | Louis T. Bradburn.    | 775. | "     | William Abbot.         |
| "     | Melitiah Jordan, Jr.  | 776. | "     | Nicholas Tucker.       |
| "     | Benj. F. Jayne.       | 777. | "     | Atkins S. Cates.       |
| "     | Harrison O. Gray.     | 778. | "     | Ira Nash.              |
| "     | Wm. M. Otis.          | 779. | "     | Franklin Baxter.       |
| "     | Albert C. Otis.       | 780. | "     | Charles A. Coombs.     |
| "     | John Boyd.            | 781. | "     | Edmund Hammond.        |
| "     | Galen O. Norton.      | 782. | "     | Jesse F. Hosmer.       |
| "     | George M. Hooper.     | 783. | "     | Frederick W. Kline.    |
| "     | Oliver L. Bearce.     | 784. | "     | William Smith.         |
| Mate  | George Blanchard.     | 785. | "     | William Brown.         |
| Capt. | Edward Moses.         | 786. | "     | William Flye.          |
| "     | David Thompson.       | 787. | "     | John G. Cheever.       |
| "     | Walter Chadwick.      | 788. | "     | Noyes R. Denison.      |
| "     | Claudius B. Williams. | 789. | "     | Theodore Zerega.       |
| "     | Heman Smith.          | 790. | "     | Ira B. Davis.          |
| "     | Bartlett S. Mayo.     | 791. | "     | Nathaniel C. Harris.   |
| "     | Gordon G. Berry.      | 792. | "     | Maurice Digard.        |
| "     | Henry Whiting, Jr.    | 793. | "     | John K. Nickerson.     |
| "     | John McVeity.         | 794. | "     | Geo. E. Nelson.        |
| "     | Chas. A. Enel.        | 795. | "     | Samuel K. Leach.       |
| "     | William M. Swasey.    | 796. | "     | Daniel W. Collum.      |
| "     | Christopher Collier.  | 797. | "     | William H. Macdowell.  |
| "     | Ira T. Horton.        | 798. | "     | Jame. T. Underhill.    |
| "     | Bradley S. Smith.     | 799. | "     | Charles D. Davenport.  |
| "     | Horatio Howes.        | 800. | "     | Frederick B. Northrup. |
| "     | Colman Kelley.        | 801. | "     | Wm. F. Townsend.       |
| "     | John Arnold.          | 802. | "     | Abraham Jansen.        |
| "     | George A. Hopley.     | 803. | "     | Frank H. Cooper.       |
| "     | James F. Cleveland.   | 804. | "     | Samuel H. Rowley.      |

|      |       |                         |      |       |                      |
|------|-------|-------------------------|------|-------|----------------------|
| 805. | Capt. | Jason D. Leighton.      | 865. | Capt. | Daniel C. Marston.   |
| 806. | "     | Frank B. Ames.          | 866. | "     | Warren P. Haynes.    |
| 807. | "     | James G. Carr.          | 867. | "     | James Spencer.       |
| 808. | "     | Nicholas R. Brewer.     | 868. | "     | Chas. D. Matthews.   |
| 809. | "     | William Shepherd.       | 869. | "     | Benj. K. Babidge.    |
| 810. | "     | Francis H. Jarvis.      | 870. | "     | William S. Hutton.   |
| 811. | "     | David Lines.            | 871. | "     | Thomas Mayo.         |
| 812. | "     | William H. Nelson.      | 872. | "     | Wm. F. Goodburn.     |
| 813. | "     | William H. Lunt.        | 873. | "     | John J. Woodfine.    |
| 814. | "     | Mark Willingale.        | 874. | Mate  | Thomas G. Hammond.   |
| 815. | "     | Charles H. Rhoades.     | 875. | Capt. | Andrew Clarke.       |
| 816. | "     | John Collins.           | 876. | "     | Albert H. Burwell.   |
| 817. | "     | Presbury N. Mayhew.     | 877. | "     | Robert A. Moser.     |
| 818. | "     | William Williams.       | 878. | "     | Henry T. Keene.      |
| 819. | "     | Charles Corbett.        | 879. | Mate  | Franklin Wescott.    |
| 820. | "     | Nathan F. Rogers.       | 880. | "     | Abram Appleby.       |
| 821. | "     | Alexandria J. Johnston. | 881. | Capt. | Edward Coombs.       |
| 822. | "     | Thomas King.            | 882. | "     | Harrison O. Giles.   |
| 823. | "     | Chas. W. McLoon.        | 883. | "     | William Conley.      |
| 824. | "     | Nelson Crowell.         | 884. | "     | Horace A. Wilson.    |
| 825. | "     | Francis Horn.           | 885. | "     | Charles E. Keeney.   |
| 826. | "     | Colin R. Williams.      | 886. | "     | Benjamin Watlington. |
| 827. | "     | Joseph W. Congdon.      | 887. | "     | James Thompson.      |
| 828. | "     | Samuel Lee.             | 888. | "     | Pitkin Page.         |
| 829. | "     | William R. Hathaway.    | 889. | "     | George P. Page.      |
| 830. | "     | Francis T. Blish.       | 890. | "     | James A. Freeman.    |
| 831. | "     | Benjamin C. Gould.      | 891. | "     | Francis Burgess.     |
| 832. | "     | David H. Hall.          | 892. | "     | Aug. D. Dunbar.      |
| 833. | "     | Edward B. Brandon.      | 893. | "     | Chas. Hamilton.      |
| 834. | "     | John C. Wells.          | 894. | "     | Franklin Lawrence.   |
| 835. | "     | Wilfred W. Megill.      | 895. | "     | Edward Herrick.      |
| 836. | "     | Jos. G. White.          | 896. | "     | George Martin.       |
| 837. | "     | Johnathan L. Sears.     | 897. | "     | Paul Mayo.           |
| 838. | "     | Nathan M. Russell.      | 898. | Mate  | Wm. Hopkins.         |
| 839. | "     | Seth L. Squires.        | 899. | Capt. | Eben R. York.        |
| 840. | "     | John M. Cavally.        | 900. | "     | John H. Chase.       |
| 841. | "     | Ezra S. Anderson.       | 901. | "     | Charles Boutelle.    |
| 842. | "     | Hiram F. Sparrow.       | 902. | "     | Joseph Limeburner.   |
| 843. | "     | Simeon Pepper.          | 903. | "     | William Hughes.      |
| 844. | "     | Fred. M. Lambert.       | 904. | "     | John K. Perkins.     |
| 845. | "     | Wm. W. Fowler.          | 905. | "     | Uriah B. Patten.     |
| 846. | "     | Henry L. Rowland.       | 906. | "     | Graham J. Lester.    |
| 847. | Mate  | Henry Kloepel.          | 907. | "     | Thos. P. Stetson.    |
| 848. | "     | Henry C. Palmer.        | 908. | "     | Thos. V. Bliffins.   |
| 849. | "     | George Keeney.          | 909. | "     | Henry True.          |
| 850. | Capt. | Stephen Wade.           | 910. | "     | Albert Burger.       |
| 851. | "     | Joseph H. Hawks.        | 911. | "     | John Simons.         |
| 852. | "     | Benjamin S. Briggs.     | 912. | "     | Nicklas Nicklason.   |
| 853. | "     | Alexander McKennon.     | 913. | "     | Casper Bogert.       |
| 854. | "     | Charles A. Marshall.    | 914. | "     | Henry Gadd.          |
| 855. | "     | Francis L. Bullock.     | 915. | "     | William Link.        |
| 856. | "     | Henry A. L. Potter.     | 916. | "     | John L. Dunton.      |
| 857. | "     | Thomas A. Sears.        | 917. | "     | Hanford Nichols.     |
| 858. | "     | Albert Spencer.         | 918. | "     | Robert Anderson.     |
| 859. | "     | William B. Moore.       | 919. | "     | Enoch H. Sturtevant. |
| 860. | Mate  | Philander Liscum.       | 920. | "     | Frederick Meady.     |
| 861. | Capt. | Samuel T. Kissam.       | 921. | "     | James M. Bryer.      |
| 862. | "     | Gamaliel Smith.         | 922. | "     | Mark Discosway.      |
| 863. | "     | Henry J. Morris.        | 923. | "     | Henry Sickels.       |
| 864. | "     | John F. Holmes.         | 924. | "     | Nelson Thomas.       |

|          |                        |             |                        |
|----------|------------------------|-------------|------------------------|
| i. Capt. | Alfred Patterson.      | 985. Capt.  | McLaurin F. Pickering. |
| "        | Johnathan Chase.       | 986. "      | Prince Harding.        |
| "        | George W. Higgins.     | 987. "      | Henry Oldaker.         |
| "        | Benjamin F. Freeman.   | 988. Mate   | John Domansky          |
| "        | George Share.          | 989. Capt.  | Wm. White.             |
| "        | John O'Donnell.        | 990. "      | Joseph Blankinship.    |
| "        | Chas. J. Perkins.      | 991. Capt.  | James Auld.            |
| "        | Job A. Swim.           | 992. Mate   | John H. Jenks.         |
| "        | Elihu Spicer Jr.       | 993. Capt.  | Wm. E. Plummer.        |
| "        | Enoch E. Mulliner.     | 994. "      | William Nelson.        |
| Mate     | Henry P. Conner.       | 995. "      | Daniel Doane.          |
| Capt.    | Willard S. Higgins.    | 996. "      | Chas. Gillette.        |
| "        | Frederick S. Brandt.   | 997. "      | Alfred Price.          |
| "        | Benjamin F. Marsh.     | 998. "      | Geo. S. Pendleton.     |
| "        | Lewis Higgins.         | 999. "      | Isaac Clason.          |
| "        | Mariner S. Crosby.     | 1000. "     | Mandeville P. Powers.  |
| "        | Oliver E. Briggs.      | 1001. "     | Sylvanus Mott.         |
| Mate     | Peter C. Sanneman.     | 1002. "     | David J. Sturges.      |
| Capt.    | Franklin N. Van Brunt. | 1003. "     | Wm. Campbell.          |
| "        | Levi P. Morton.        | 1004. "     | Wm. H. Robinson.       |
| "        | Henry W. Stearns.      | 1005. "     | Henry Newton.          |
| "        | Nathaniel Pinkham.     | 1006. "     | Albion K. Miller.      |
| "        | Benjamin H. Hobart.    | 1007. "     | John M. Hudson.        |
| "        | William S. Topping.    | 1008. "     | Patrick Kelly.         |
| "        | Charles A. Boutelle.   | 1009. "     | Henry A. Gadsden.      |
| "        | Albert W. Harding.     | 1010. "     | Henry S. Rich.         |
| "        | Joseph H. Tucker.      | 1011. "     | Eastman Cutts.         |
| "        | Daniel Bradford.       | 1012. "     | George W. Baker.       |
| "        | Joseph E. Holloway.    | 1013. "     | Simeon Howard.         |
| "        | Morgan L. Pultz.       | 1014. "     | Jas. F. Douto.         |
| "        | John E. Downing.       | 1015. "     | Owen Roberts.          |
| "        | James J. Laprelle.     | 1016. "     | Edward C. Fickett.     |
| "        | Wm. P. O'Brien.        | 1017. "     | Gideon L. Stanwood.    |
| "        | Henry Pearson.         | 1018. "     | Joseph W. Ludwig.      |
| "        | Henry A. Green.        | 1019. "     | William F. Springer.   |
| Mate     | John A. Henriques.     | 1020. "     | James H. Thomas.       |
| Capt.    | Wm. Mahlman.           | 1021. "     | Sumner R. Tibbets.     |
| "        | Wm. C. Dunham.         | 1022. "     | Lincoln W. Tibbets.    |
| "        | John H. Luther.        | 1023. "     | Elijah S. McCarty.     |
| "        | Edward A. Mix.         | 1024. "     | Wm. H. Mitchell.       |
| "        | Lucius L. Butler.      | 1025. "     | Wm. McEwen.            |
| Mate     | John Hanson.           | 1026. "     | Andrew T. Percy.       |
| Capt.    | Chas. Haines.          | 1027. "     | Charles De Bevoise.    |
| "        | Wm. Wiley.             | 1028. "     | Wm. C. Harris.         |
| "        | Merrill Sewall.        | 1029. Mate  | Oliver T. Miller.      |
| "        | Wm. Hodger.            | 1030. Capt. | John S. Stephens.      |
| "        | Eben F. Linekin.       | 1031. "     | Cyrus A. Nichols.      |
| "        | Alfred G. Spencer.     | 1032. "     | James R. Speed.        |
| "        | Thos. W. Freeman.      | 1033. "     | Nathaniel C. Johnson.  |
| "        | Geo. W. Edge.          | 1034. "     | Clarence H. Hazleton.  |
| "        | Allen Alexander.       | 1035. "     | Chas. F. H. Menges.    |
| Mate     | Walter Sargent.        | 1036. "     | Henry Taylor.          |
| Capt.    | Wm. Thompson.          | 1037. "     | Wm. Leisegang.         |
| "        | Nicholas Lipari.       | 1038. "     | Samuel P. Willeby.     |
| "        | Henry Jackson.         | 1039. "     | Chas. B. Pendleton.    |
| "        | Alonzo Small.          | 1040. "     | Chas. H. Blake.        |
| "        | Edward H. Wood.        | 1041. Mate  | Joseph Fagan.          |
| "        | Jas. W. Spates.        | 1042. "     | Chas. F. Gardner.      |
| "        | Francis Ellingwood.    | 1043. Capt. | Franklin B. Lothrop.   |
| "        | Edgar H. Lovell.       | 1044. "     | Isaac H. Rogers.       |

|        |       |                        |        |       |                          |
|--------|-------|------------------------|--------|-------|--------------------------|
| 1045.  | Capt. | Josiah H. Nickerson.   | 1105.  | Capt. | Oscar McCarty.           |
| 1046.  | "     | Nathaniel Webber.      | 1106.  | "     | Thomas W. Williams.      |
| 1047.  | "     | John A. Carver.        | 1107.  | Mate  | John H. Humphrey.        |
| 1048.  | "     | Henry C. Fuller.       | 1108.  | Capt. | Wm. Benton.              |
| 1049.  | Mate  | Michael Powers.        | 1109.  | "     | Hans P. Poulsen.         |
| 1050.  | Capt. | John E. Barstow.       | 1110.  | "     | Geo. B. Woodward.        |
| 1051.  | "     | Jonathan T. Morrill.   | 1111.  | "     | Josiah Eldridge.         |
| 1052.  | "     | Oliver F. Hazard.      | 1112.  | "     | William V. Simpson.      |
| 1053.  | "     | Wm. C. Plummer.        | 1113.  | "     | Henry N. Carver.         |
| 1054.  | "     | John A. Thomas.        | 1114.  | "     | Thomas H. Winslow.       |
| 1055.  | "     | William R. Graham.     | 1115.  | "     | Rufus Fowler.            |
| 1056.  | "     | Thomas Chatfield.      | 1116.  | "     | Ernest L. Scharffenorth. |
| 1057.  | "     | Lewis Mankin.          | 1117.  | "     | Michael Cromley.         |
| 1058.  | "     | William Nilson.        | 1118.  | "     | Fred. L. Hewitt.         |
| 1059.  | "     | Consider Thomas.       | 1119.  | Mate  | Arthur Bayrd.            |
| 1060.  | "     | Cyrus E. Staples.      | 1120.  | Capt. | Richard E. Patton.       |
| 1061.  | "     | Joshua B. Nichols.     | 1121.  | "     | Wm. Lockwood.            |
| 1062.  | "     | Joel Van Pelt.         | 1122.  | "     | Jas. H. Austin.          |
| 1063.  | "     | Alexander Tillinghast. | 1123.  | "     | Joseph B. Lockwood.      |
| 1064.  | "     | Edwin G. Eastman.      | 1124.  | "     | David B. Swan.           |
| 1065.  | "     | Theodore F. De Luce.   | 1125.  | "     | Robt. B. Benson.         |
| 1066.  | "     | David Crane.           | 1126.  | "     | Wm. B. Hooper.           |
| •1067. | "     | Richard G. Luce, Jr.   | 1127.  | "     | Bruce McKinney.          |
| 1068.  | "     | Cunningham Campbell.   | 1128.  | "     | Joseph Osgood.           |
| 1069.  | "     | Geo. W. Jewett.        | 1129.  | Mate  | Charles Eastgood.        |
| 1070.  | "     | Albert H. De Pass.     | 1130.  | Capt. | Alden Packard.           |
| 1071.  | "     | W. B. Daniels.         | •1131. | "     | William Wilson.          |
| 1072.  | "     | Frankin Wallace.       | 1132.  | "     | Mark Gray.               |
| 1073.  | "     | William Sweetser.      | 1134.  | "     | Jas. B. McLellan.        |
| 1074.  | "     | John Nichols.          | 1134.  | "     | Chas. B. Hobron.         |
| 1075.  | "     | Geo. Burstow.          | 1135.  | "     | Joseph Hand.             |
| 1076.  | "     | Robert Mount.          | 1136.  | "     | Ralph Morse.             |
| 1077.  | "     | Thomas Street.         | 1137.  | "     | Augustus Morgan.         |
| 1078.  | "     | George M. Nichols.     | 1138.  | "     | Levi S. Crockett.        |
| 1079.  | "     | Sherman G. Stevens.    | 1139.  | "     | Wm. R. Mulliner.         |
| 1080.  | "     | James S. Barton.       | 1140.  | "     | Charles N. Hall.         |
| 1081.  | "     | John Winchester.       | 1141.  | "     | Robt. W. Caxier.         |
| 1082.  | Mate  | Geo. W. Loyd.          | 1142.  | "     | John D. Lawson.          |
| 1083.  | Capt. | Isaac Coombs.          | 1143.  | "     | Daniel H. Blake.         |
| 1084.  | "     | John Power.            | •1144. | "     | John T. Smith.           |
| 1085.  | "     | Chas. Brown.           | •1145. | "     | John P. Pearson.         |
| 1086.  | "     | Robt. A. S. Pittman.   | 1146.  | "     | John Parry.              |
| 1087.  | "     | Hamilton Perry.        | 1147.  | "     | Joseph Potter.           |
| 1088.  | "     | Louis F. Brown.        | 1148.  | "     | Isaiah L. Chipman.       |
| 1089.  | "     | Stephen Wallaco.       | 1149.  | "     | Nicholas P. Berry.       |
| 1000.  | "     | Wm. C. Page.           | 1150.  | "     | William Burnard.         |
| •1091. | "     | Wm. N. Sheriff.        | 1151.  | "     | Edward Wulford.          |
| 1092.  | "     | Goo. McClure.          | 1152.  | "     | Robert W. Wheeler.       |
| 1093.  | "     | Jacob McConnell.       | 1153.  | "     | Harmon H. Tarr.          |
| 1094.  | Mate  | Chas. Evans.           | 1154.  | "     | Thaddeus M. Burt.        |
| 1095.  | Capt. | Richard Chandler.      | 1155.  | "     | James F. Chapman.        |
| 1096.  | "     | Chas. J. Hill.         | 1156.  | "     | Robert Dewhurst.         |
| 1097.  | "     | Chas. E. Preston.      | 1157.  | "     | Lewis E. Jackson.        |
| 1098.  | "     | John Pomp.             | 1158.  | "     | Arthur McCready.         |
| 1099.  | "     | Hezekiah Haling.       | 1159.  | "     | George Ellery.           |
| 1100.  | "     | David J. Harding.      | 1160.  | "     | Zedek A. Tilton.         |
| 1101.  | "     | Sam B. Hall.           | 1161.  | "     | John Powell.             |
| 1102.  | "     | Thomas C. Whitney.     | 1162.  | "     | James C. Brown.          |
| 1103.  | "     | Lewis Bates.           | 1163.  | "     | John H. Starkey.         |
| 1104.  | "     | Geo. V. Hall.          | 1164.  | "     | Thomas A. Higgins.       |

|          |                       |             |                        |
|----------|-----------------------|-------------|------------------------|
| 5. Capt. | John Smith.           | 1225. Capt. | Charles A. Netherwood. |
| 6. "     | Heszeiah K. Eldridge. | 1226. "     | Hans P. Harksen.       |
| 7. "     | John B. Morrison.     | 1227. "     | Francis P. Cushing.    |
| 8. "     | Samuel B. Reed.       | 1228. "     | Purley R. Hunnels.     |
| 9. Mate  | John Rea.             | 1229. "     | James H. Stewart.      |
| 9. Capt. | Alonzo Blanchard.     | 1230. "     | John D. Shiell.        |
| 1. "     | George J. Giles.      | 1231. "     | Wm. H. Luce.           |
| 2. "     | Albert Ryan.          | 1232. "     | Warren Morse.          |
| 3. "     | Simon Gerwer.         | 1233. "     | J. Gilman Reed.        |
| 4. "     | Maurice Cunningham.   | 1234. "     | George W. Drinkwater.  |
| 5. "     | Wm. Lind.             | 1235. "     | Richard Harding.       |
| 6. "     | Wm. Norville.         | 1236. "     | John D. Whidden.       |
| 7. "     | Henry J. Hemmingway.  | 1237. "     | Henry Rickard.         |
| 8. "     | Seraus T. Dayton.     | 1238. "     | Thomas Skolfield.      |
| 9. "     | James H. Oakes.       | 1239. "     | Robert N. Ames.        |
| 0. Mate  | Thomas McGrath.       | 1240. "     | Joseph Cintra.         |
| 1. Capt. | Edward C. Gardner.    | 1241. "     | Benjamin Carver.       |
| 2. "     | John H. Briard.       | 1242. "     | Henry G. Adams.        |
| 3. "     | Daniel F. Hutchings.  | 1243. "     | Lewis Davis, Jr.       |
| 4. "     | John G. Bates.        | 1244. "     | James B. Percy.        |
| 5. "     | Alfred F. Gardner.    | 1245. "     | Levi S. Fickett.       |
| 6. "     | Andrew D. Colcord.    | 1246. "     | James E. Lord.         |
| 7. "     | John A. Delano.       | 1247. "     | Alexander D. Campbell. |
| 8. "     | Frank Smithwick.      | 1248. Mate  | Wm. Keating.           |
| 9. "     | Peter Nelson.         | 1249. Capt. | Harper Delano.         |
| 0. "     | Russell Doane.        | 1250. "     | Samuel D. Ring.        |
| 1. "     | Joseph H. Robinson.   | 1251. "     | Edward G. Tinker.      |
| 2. "     | David C. Landis.      | 1252. "     | Richard W. Winters.    |
| 3. "     | John G. Bartow.       | 1253. "     | Burr Hull.             |
| 4. "     | James Clark.          | 1254. "     | Arthur J. Collins.     |
| 5. "     | Alexander B. Weeks.   | 1255. "     | Robert Skolfield.      |
| 6. "     | James J. Dunham.      | 1256. "     | Charles G. Carver.     |
| 7. "     | Gilmoro S. Douglass.  | 1257. "     | Charles T. Weaver.     |
| 8. "     | J. J. Lawrence.       | 1258. "     | Gilbert T. Gowdie.     |
| 9. "     | Abel M. Putten.       | 1259. "     | Tobias Adams.          |
| 0. "     | Everett Blanchard.    | 1260. "     | George Haesloop.       |
| 1. "     | Andrew Low.           | 1261. "     | Milo L. Stockton.      |
| 2. "     | Charles F. Springer.  | 1262. "     | Oliver Thorp.          |
| 3. "     | John G. Bairson.      | 1263. "     | Joseph S. Elwell.      |
| 4. "     | Edward H. Ashley.     | 1264. "     | George S. Lewis.       |
| 5. "     | Julius F. Caulkins.   | 1265. "     | Henry E. Scott.        |
| 6. "     | Thomas Anderson.      | 1266. Mate  | Henry Searight.        |
| 7. "     | John H. Freeman.      | 1267. Capt. | Henry T. Waite.        |
| 8. Mate  | Michael Daly.         | 1268. "     | George W. Leach.       |
| 9. Capt. | Edwin A. Gerrish.     | 1269. "     | George A. Patterson.   |
| 0. "     | Benjamin Crowell.     | 1270. "     | Daniel Merrill.        |
| 1. "     | James Smith.          | 1271. "     | Jonathan S. Dobson.    |
| 2. "     | Malcolm Livingston.   | 1272. "     | Timothy Batchelder.    |
| 3. "     | Arthur Champion.      | 1273. "     | Elijah L. Winchell.    |
| 4. "     | George M. Prindle.    | 1274. "     | Anthon O. Kruse.       |
| 5. Mate  | Alexander Wallace.    | 1275. "     | Edward S. Wilkins.     |
| 6. Capt. | James B. Spearwater.  | 1276. "     | James S. Benjamin.     |
| 7. "     | Ichabod Sherman.      | 1277. "     | Charles H. Stevens.    |
| 8. "     | William J. Simpson.   | 1278. "     | Calvin Sherman.        |
| 9. "     | James A. Macoduck.    | 1279. "     | Nelson H. Gray.        |
| 0. "     | Exra D. Post.         | 1280. "     | Henry Williams.        |
| 1. "     | Joseph Perkins.       | 1281. "     | Wm. A. Follansbee.     |
| 2. "     | Samuel B. Doane.      | 1282. Mate  | Wm. H. Brown.          |
| 3. "     | William A. Sands.     | 1283. Capt. | Wm. Johnston.          |
| 4. "     | Nathaniel Blanchard.  | 1284. "     | Stephen B. Davis.      |

|        |       |                       |        |       |                      |
|--------|-------|-----------------------|--------|-------|----------------------|
| 1285.  | Capt. | David Oliver.         | 1345.  | Capt. | Theo. A. Barrett.    |
| 1286.  | "     | George Marshall.      | 1346.  | "     | Thos. Nelson.        |
| 1287.  | "     | George C. Allen.      | 1347.  | "     | John A. Pendleton.   |
| 1288.  | "     | Henry Robinson.       | 1348.  | "     | Galen Consins, Jr.   |
| 1289.  | "     | John R. Anderson.     | 1349.  | "     | John P. Hillert.     |
| 1290.  | "     | Robert M. Doane.      | 1350.  | "     | Artemas T. Fletcher. |
| 1291.  | "     | Thomas M. Goodwin.    | 1351.  | "     | Robert M. Hanna.     |
| 1292.  | "     | Henry F. A. Meyers.   | 1352.  | "     | Roswell B. Baldwin.  |
| 1293.  | "     | John Thompson.        | 1353.  | "     | Robert P. Bradley.   |
| 1294.  | "     | Ichabod Norton.       | 1354.  | "     | Joseph M. Norton.    |
| 1295.  | "     | Simon H. Cotter.      | 1355.  | "     | Hiram Newcomb.       |
| 1296.  | "     | Jabez H. Snow.        | 1356.  | "     | Henry D. Cutting.    |
| 1297.  | "     | James Daniels.        | 1357.  | "     | Chas. H. Rockwell.   |
| •1298. | "     | Thomas J. Leavitt.    | 1358.  | "     | James Ross.          |
| 1299.  | "     | Antonio Vianello.     | 1359.  | "     | Joseph G. Barstow.   |
| 1300.  | "     | Jas. F. Hammond.      | 1360.  | "     | Isaiah Chase, Jr.    |
| •1301. | "     | William H. White.     | 1361.  | "     | Wm. Greenman.        |
| •1302. | "     | Eliezar R. Winslow.   | 1362.  | "     | Wm. Harquail.        |
| 1303.  | "     | Nathaniel B. Merrill. | 1363.  | "     | Wm. J. Singer.       |
| 1304.  | "     | Richard Ross.         | 1364.  | "     | Fredk. A. Hosmer.    |
| 1305.  | "     | John L. Gibbs.        | 1365.  | "     | Geo. N. Lamb.        |
| 1306.  | "     | Chas. C. Lima.        | 1366.  | "     | Uriah M. Lamb.       |
| 1307.  | "     | August Alexander.     | 1367.  | "     | Phinley W. Reed.     |
| 1308.  | "     | Thos. Bassett.        | 1368.  | "     | Gregory Croston.     |
| •1309. | "     | Henry Kearney.        | 1369.  | "     | Thomas Smith.        |
| 1310.  | "     | Benjamin S. Hatch.    | 1370.  | "     | Nehemiah Hubbard.    |
| 1311.  | "     | Chas. Ellis.          | 1371.  | "     | Horatio Stevens.     |
| 1312.  | "     | Joseph Davis.         | 1372.  | "     | Eugene J. Farrell.   |
| 1313.  | "     | Christian Anderson.   | 1373.  | "     | Wm. Elliott.         |
| 1314.  | "     | Horatio N. Gray.      | 1374.  | "     | Conrad Erickson.     |
| 1315.  | "     | William W. French.    | 1375.  | "     | James W. Gallison.   |
| 1316.  | "     | Andrew E. Dunham.     | 1376.  | "     | James E. Michener.   |
| 1317.  | "     | Job C. Chamberlin.    | 1377.  | "     | Saml. E. Fickett.    |
| 1318.  | "     | Edward N. K. Place.   | 1378.  | "     | Edwin Chase.         |
| 1319.  | "     | Ambrose T. Osgood.    | 1379.  | "     | Oliver Page.         |
| •1320. | "     | Isaac T. Horton.      | 1380.  | Mate  | Antone F. Brincken.  |
| 1321.  | Mate  | William H. Hunt.      | 1381.  | Capt. | Thomas N. Cooksey.   |
| 1322.  | Capt. | Benjamin B. Bliss.    | 1382.  | "     | James Y. Claypoole.  |
| •1323. | "     | John Monroe.          | 1383.  | "     | Geo. Fogerty.        |
| 1324.  | "     | Edwin C. Eldred.      | 1384.  | "     | Walter B. Sherwood.  |
| 1325.  | Mate  | Shangar S. Hand.      | 1385.  | "     | Henry M. Nickels.    |
| 1326.  | Capt. | Joseph Conway.        | 1386.  | "     | Reuben Sherman.      |
| 1327.  | Mate  | Henry Muhlenhoff.     | 1387.  | "     | Thos. T. Partridge.  |
| 1328.  | Capt. | Charles Panreiter.    | •1388. | "     | Horace P. Coffin.    |
| 1329.  | "     | Francis W. W. Cole.   | 1389.  | "     | Lorenzo Buck.        |
| 1330.  | "     | James H. Drinkwater.  | 1390.  | "     | William A. Miller.   |
| 1381.  | "     | Edward Edwards.       | 1391.  | "     | Fred. A. Sampson.    |
| 1382.  | "     | Phineas R. Bates.     | 1392.  | "     | Chas. F. Pool.       |
| 1383.  | "     | Isaiah Cousins.       | 1393.  | "     | Wm. L. Merry.        |
| 1384.  | "     | Charles M. Jones.     | 1394.  | "     | Josiah Dudley.       |
| 1385.  | "     | Charles W. Butler.    | 1395.  | "     | James G. Whitman.    |
| •1386. | "     | Asahel H. Fulton.     | 1396.  | "     | Walter Snellgrove.   |
| 1387.  | "     | John S. Oliver.       | 1397.  | "     | Geo. F. Maloney.     |
| 1388.  | "     | James F. P. Rust.     | 1398.  | "     | Saml. B. Pike.       |
| 1389.  | "     | Charles H. Norris.    | 1399.  | "     | Wm. Stanton.         |
| 1390.  | "     | Edward Cooper.        | 1400.  | Mate  | Henry J. Agnew.      |
| 1391.  | "     | Benjamin C. Townsend. | •1401. | Capt. | Robert Marshall.     |
| 1392.  | "     | Edwin A. Delanoy.     | 1402.  | "     | John H. Briggs.      |
| 1393.  | "     | Henry Master.         | 1403.  | "     | David A. Strout.     |
| 1394.  | "     | Edward K. Packard.    | 1404.  | "     | John L. Brown.       |

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|-------------|-------------------------|-------------|----------------------|
| 1405. Capt. | Benj. F. McCarty.       | 1465. Capt. | Henry N. Long.       |
| 1406. "     | Richard McD. Nugent.    | 1466. "     | Wm. H. Harrison.     |
| 1407. "     | Jno. R. Feegan.         | 1467. "     | Alexander P. Smith.  |
| 1408. "     | Jeremiah Jones.         | 1468. "     | Thomas Simmonds.     |
| 1409. "     | Augustus D. Holmes.     | 1469. "     | Raphael A. Bayley.   |
| 1410. "     | Franklin Hallet.        | 1470. "     | Smith Weeks.         |
| 1411. "     | Lucius B Sargent.       | 1471. "     | Otis L. Pattangall.  |
| 1412. "     | Jarvis Fatten.          | 1472. "     | Samuel Leighton.     |
| 1413. "     | Andrew Dalzell.         | 1473. "     | Humphrey Leaming.    |
| 1414. "     | Geo. W. Castner.        | 1474. Mate  | Joseph Frost.        |
| 1415. "     | Jonathan Bragdon.       | 1475. Capt. | David Robinson.      |
| 1416. "     | John J. Raynes.         | 1476. "     | Albert Minott.       |
| 1417. "     | Peter A. Ingham.        | 1477. "     | Samuel Clark.        |
| 1418. "     | Isaac Washington.       | 1478. "     | Horatio B. Hooper.   |
| 1419. "     | James Hayes.            | 1479. "     | Justus Ryder.        |
| 1420. "     | Robert W. Branscombe.   | 1480. "     | Thomas Griffin.      |
| 1421. "     | Saml. B. Johnson.       | 1481. "     | Joseph A. Denman.    |
| 1422. "     | Geo. B. Crary.          | 1482. "     | Nicolas H. Habig.    |
| 1423. "     | Joseph W. Holmes.       | 1483. "     | George W. Sherman.   |
| 1424. "     | Jeremiah B. Richardson. | 1484. "     | Charles Hallett.     |
| 1425. "     | Edward Wendell.         | 1485. "     | George R. Bailey.    |
| 1426. "     | Warren R. Bunker.       | 1486. "     | Erick Nelson.        |
| 1427. "     | Thos. R. Morrish.       | 1487. Mate  | Edward M. Dimon.     |
| 1428. "     | Henry Kirby.            | 1488. "     | Jabez F. Chance.     |
| 1429. "     | Henry Wilson.           | 1489. "     | Edward C. Pratt.     |
| 1430. "     | John W. Clemons.        | 1490. Capt. | George S. Weeks.     |
| 1431. Mate  | Chas. Seymour.          | 1491. Mate  | Luther W. Norton.    |
| 1432. Capt. | Ephraim Orcutt.         | 1492. Capt. | Chas. M. Gary.       |
| 1433. "     | Wilson Stout.           | 1493. "     | Alfred A. Izett.     |
| 1434. "     | William Lanfare.        | 1494. "     | Joshua N. Billings.  |
| 1435. "     | Adam H. Jackson.        | 1495. "     | George Mathes.       |
| 1436. "     | Wm. Murray.             | 1496. "     | John L. Shackford.   |
| 1437. Mate  | Geo. W. Miller.         | 1497. "     | Charles Ringot.      |
| 1438. Capt. | Oscar Cutts.            | 1498. "     | Edward H. Seeley.    |
| 1439. "     | " Wm. H. Rich.          | 1499. "     | Benjamin S. Truo.    |
| 1440. "     | Jas. C. Campbell.       | 1500. "     | William G. Hatch.    |
| 1441. "     | Fred. W. Jarvis.        | 1501. "     | Robert C. Cook.      |
| 1442. "     | Jas. H. Terry.          | 1502. "     | James S. Hewitt.     |
| 1443. "     | Richard F. Dodge.       | 1503. "     | James Doherty.       |
| 1444. "     | Alfred C. Yatea.        | 1504. "     | A'onzio Smith.       |
| 1445. Mate  | Gilbert M. Nash.        | 1505. "     | Henry G. McKenner.   |
| 1446. Capt. | Alfred W. Young.        | 1506. "     | Norman Atwater.      |
| 1447. "     | Andrew F. Dailey.       | 1507. "     | Jens P. Toft.        |
| 1448. "     | Austin Jayne.           | 1508. "     | Charles P. Marsden.  |
| 1449. "     | Nathan P. Gibbs.        | 1509. "     | Darius C. Hall.      |
| 1450. "     | Nelson A. Freethy.      | 1510. "     | James McKie.         |
| 1451. "     | Joseph R. Shillaber.    | 1511. "     | Elisha Gibbs.        |
| 1452. "     | Joseph M. Higgins.      | 1512. "     | Jacob Stream.        |
| 1453. "     | Charles H. Sweeting.    | 1513. "     | Joshua T. Young.     |
| 1454. "     | Asa B. Lambert.         | 1514. "     | Freeman Gibbs.       |
| 1455. "     | Henry A. Starrett.      | 1515. "     | George King.         |
| 1456. "     | Nathan B. Grant.        | 1516. "     | Edmund Smith.        |
| 1457. "     | Albert Winslow.         | 1517. "     | James T. Sparks.     |
| 1458. "     | Ira B. Tuthill, Jr.     | 1518. "     | Charles De Wolf.     |
| 1459. "     | Henry R. Atwood.        | 1519. "     | Richard Waycott.     |
| 1460. "     | Ebenezer Hawkins.       | 1520. "     | Llewellyn A. Wright. |
| 1461. "     | George G. Fletcher.     | 1521. "     | Hezekiah Galacar.    |
| 1462. "     | Frank McDiarmid.        | 1522. "     | Warren Q. Sears.     |
| 1463. Mate  | Dennis J. G. Stetson.   | 1523. "     | Gaius P. Pomeroy.    |
| 1464. Capt. | Thomas G. McNitte.      | 1524. "     | John R. Curtiss.     |

## APPENDIX.

|       |       |                       |       |       |                         |
|-------|-------|-----------------------|-------|-------|-------------------------|
| 1525. | Capt. | Hugh Loud.            | 1585. | Capt. | Benjamin Winslow.       |
| 1526. | "     | Samuel Belden.        | 1586. | "     | David W. Carroll.       |
| 1527. | "     | Erastus G. Dayton.    | 1587. | "     | Isaac F. Gilkey.        |
| 1528. | Mate  | Wm. H. Francis.       | 1588. | "     | Edward T. Furber.       |
| 1529. | "     | Almon Rowell.         | 1589. | "     | Fred. M. Burmeister.    |
| 1530. | Capt. | Joseph Mitchell.      | 1590. | "     | Nehemiah D. Crocker.    |
| 1531. | "     | Allen B. Snow.        | 1591. | "     | William Daniels.        |
| 1532. | "     | John H. Baker.        | 1592. | "     | Andrew H. Eschen.       |
| 1533. | "     | Wm. Henry McGuire.    | 1593. | "     | William S. Crockett.    |
| 1534. | Mate  | John H. Merry.        | 1594. | "     | Nathaniel G. Tucker.    |
| 1535. | Capt. | David V. Pool.        | 1595. | "     | Hezekiah Herriman.      |
| 1536. | "     | Wm. E. Ross.          | 1596. | "     | Alfred E. Goodsell.     |
| 1537. | "     | Barnabas Higgins.     | 1597. | "     | Alfred O. Puine.        |
| 1538. | "     | Robert Whitty.        | 1598. | "     | Alexander V. Soule.     |
| 1539. | "     | Joseph Chandler.      | 1599. | "     | Jeremiah F. Fuller.     |
| 1540. | "     | Silas M. Morton.      | 1600. | "     | Joseph C. Currier.      |
| 1541. | "     | William R. Davis.     | 1601. | "     | John Coe.               |
| 1542. | "     | John T. Hughes.       | 1602. | "     | John Brightman.         |
| 1543. | "     | John P. Howitt.       | 1603. | "     | Zenas B. Ellis.         |
| 1544. | "     | Joseph Hartich.       | 1604. | "     | Isaac Peterson.         |
| 1545. | "     | John T. Prentiss.     | 1605. | "     | Daniel McCahan, Jr.     |
| 1546. | "     | Angus K. Atwood.      | 1606. | "     | Thomas Johnson.         |
| 1547. | "     | James W. Burns.       | 1607. | "     | John Trimble.           |
| 1548. | "     | Thomas Reid.          | 1608. | Mate  | John C. Brown.          |
| 1549. | "     | Howell P. Goodale.    | 1609. | Capt. | John A. Brown.          |
| 1550. | "     | Edward S. Keysar.     | 1610. | "     | Henry G. Windsor.       |
| 1551. | "     | George N. Taylor.     | 1611. | "     | Hezekiah Parmelee.      |
| 1552. | "     | Robert Norton.        | 1612. | "     | Thomas S. Jones.        |
| 1553. | "     | John W. Seethusen.    | 1613. | "     | George McCulloch.       |
| 1554. | "     | John F. Gilkey.       | 1614. | "     | Thomas H. Connanton.    |
| 1555. | "     | William A. McGill.    | 1615. | Mnto  | Levis Miller.           |
| 1556. | "     | Julius F. Beyer.      | 1616. | Capt. | Oliver R. Mumford.      |
| 1557. | "     | John Lancy.           | 1617. | "     | Andrew S. Haven.        |
| 1558. | "     | John S. Titcomb.      | 1618. | "     | Alfred Vance            |
| 1559. | "     | Joseph W. Spencer.    | 1619. | "     | Elias Nelson.           |
| 1560. | "     | Samuel Herrick.       | 1620. | "     | Malcolm McDonald.       |
| 1561. | "     | Thomas F. Bibber.     | 1621. | "     | James Smith.            |
| 1562. | "     | Henry C. Small.       | 1622. | "     | Napoleon Boughton.      |
| 1563. | "     | Alfred Watts.         | 1623. | "     | Samuel Smith.           |
| 1564. | "     | Julius H. Jenkins.    | 1624. | "     | Chas. A. Brockelman.    |
| 1565. | "     | David Sawyer.         | 1625. | "     | Reuel T. Waite.         |
| 1566. | "     | Cephas Reed.          | 1626. | "     | John R. Congdon         |
| 1567. | "     | William J. Cheever.   | 1627. | "     | David Atherton.         |
| 1568. | "     | Henry H. Hollis.      | 1628. | "     | Edward Dunn.            |
| 1569. | "     | James Craig.          | 1629. | "     | Peter M. Beal.          |
| 1570. | "     | Temple C. Coffin      | 1630. | "     | Jeremiah Y. Pettingill. |
| 1571. | "     | Henry B. Park.        | 1631. | "     | John H. Tabbut.         |
| 1572. | "     | Charles Littlejohn.   | 1632. | "     | Hezekiah T. Carman.     |
| 1573. | "     | Alex. R. Stevens.     | 1633. | "     | William H. Leland.      |
| 1574. | "     | Charles Meany.        | 1634. | "     | Charles E. Crockett.    |
| 1575. | "     | James H. Winchester.  | 1635. | "     | William A. Atherton.    |
| 1576. | "     | Daniel Clark.         | 1636. | "     | Joseph B. Woodbury.     |
| 1577. | "     | Michael Singer.       | 1637. | "     | Waldo P. Lowell.        |
| 1578. | "     | John M. Cowan.        | 1638. | "     | John Devereaux.         |
| 1579. | "     | Thomas C. Halsey, Jr. | 1639. | "     | Henry H. Greeno.        |
| 1580. | "     | Joseph B. Adie.       | 1640. | "     | Wm. G. Frith.           |
| 1581. | "     | Samuel T. Melville.   | 1641. | "     | Levi Baker.             |
| 1582. | "     | James Abbott.         | 1642. | "     | Alex. C. Post.          |
| 1583. | "     | Peter Hagety.         | 1643. | "     | James F. Tamm.          |
| 1584. | "     | Henry C. Carman.      | 1644. | "     | Charles H. Clifford.    |

|           |                          |             |                      |
|-----------|--------------------------|-------------|----------------------|
| 5. Capt.  | John D. Kelly.           | 1705. Capt. | George Nicholas.     |
| 6. "      | John Lorentson.          | 1706. "     | William H. Johnson.  |
| 7. "      | Martin V. B. Ruland.     | 1707. "     | Thomas Gibson.       |
| 8. "      | William H. Reid.         | 1708. "     | Henry D. Harriman.   |
| 9. "      | Alonso R. Fickett.       | 1709. "     | Albert C. Walsh.     |
| 10. Mate  | Frederick Elliott.       | 1710. "     | Henry J. Bown.       |
| 11. Capt. | Isaac K. Moulton.        | 1711. "     | George W. Robinson.  |
| 12. "     | Thos. B. R. Lee.         | 1712. "     | Daniel W. Knight.    |
| 13. "     | Wm. S. Richardson.       | 1713. "     | William P. York.     |
| 14. "     | Horatio A. Patten.       | 1714. "     | Aaron W. Blauvelt.   |
| 15. "     | Ole. K. Bernbum.         | 1715. "     | William H. Doane.    |
| 16. "     | Geo. J. Thestrup.        | 1716. "     | Ralph Devereux, Jr.  |
| 17. "     | Jeremiah S. Gardner.     | 1717. "     | William H. Griffing. |
| 18. "     | Jeremiah S. Gardner, Jr. | 1718. "     | John C. Beals.       |
| 19. "     | Reuben King.             | 1719. "     | Charles P. Low.      |
| 20. "     | Thos. M. Nichols.        | 1720. "     | George W. Carlisle.  |
| 21. "     | John Bishop, Jr.         | 1721. "     | Francis B. Davis.    |
| 22. "     | Alexander P. Fulton      | 1722. "     | James H. Hughes.     |
| 23. "     | Adolph L. King.          | 1723. "     | Charles Rawlings.    |
| 24. "     | Amos T. Hardy.           | 1724. "     | Edward M. Bulkley    |
| 25. "     | Henry L. Wooster.        | 1725. "     | Elisha E. Atkins.    |
| 26. "     | Frederick Olsen.         | 1726. "     | Joseph W. Priest.    |
| 27. "     | James B. Robinson.       | 1727. "     | Henry Janssen.       |
| 28. "     | John A. Woodworth.       | 1728. "     | Thomas Means.        |
| 29. "     | Frederick W. Hearn.      | 1729. "     | John D. McNeil.      |
| 30. "     | Oliver Amesbury.         | 1730. "     | Henry Dolby.         |
| 1. "      | William P. Davis.        | 1731. "     | Thomas Roy.          |
| 2. "      | Zebina Shaw.             | 1732. "     | Robert Dart.         |
| 3. "      | Thomas Jones.            | 1733. "     | Townsend Jones.      |
| 4. Mate   | Thomas Stevens.          | 1734. "     | Robert Emery.        |
| 5. Capt.  | Joseph W. Chandler.      | 1735. "     | John Trecartin.      |
| 6. "      | William Trott.           | 1736. "     | Samuel Leeman.       |
| 7. "      | John G. Hervey.          | 1737. "     | Noah Emery.          |
| 8. "      | Job Derrickson.          | 1738. "     | Belcher T. Thurlow.  |
| 9. "      | Pierre Giraud.           | 1739. "     | Daniel W. Howes.     |
| 10. "     | John Terry.              | 1740. "     | Carl M. Klyhn.       |
| 11. "     | Samuel Harding.          | 1741. "     | Burton Wellington.   |
| 12. "     | Seth C. Mullin.          | 1742. "     | John Wren.           |
| 13. "     | Charles S. Hudson.       | 1743. "     | Levi Densmore.       |
| 14. "     | Wilson Dunn.             | 1744. "     | William Smith.       |
| 15. "     | James Sheehan.           | 1745. "     | Robert Black.        |
| 16. "     | Francis M. Montell.      | 1746. "     | Egbert E. Horton.    |
| 17. "     | John H. Cooper.          | 1747. "     | Thomas Brown.        |
| 18. "     | Daniel N. Moss.          | 1748. "     | Calvin T. Packard.   |
| 19. "     | Franklin C. Bennett.     | 1749. "     | Samuel D. Stone.     |
| 20. "     | Walter D. Whittemore.    | 1750. "     | Geo. L. Luce.        |
| 21. "     | Johanus P. Groos.        | 1751. "     | Wm. Thompson.        |
| 22. "     | William Hull.            | 1752. "     | Amos D. Doliver.     |
| 23. "     | Joseph O. Robinson.      | 1753. "     | Jacob Auld.          |
| 24. "     | Edwin E. Rudolph.        | 1754. "     | Geo. W. Hill.        |
| 25. "     | Andrew Day.              | 1755. "     | Chas. F. Langley.    |
| 26. "     | Rudolph Keller.          | 1756. "     | Jacob Brown.         |
| 27. "     | Edward Patterson.        | 1757. "     | Robert J. Lowrey.    |
| 28. "     | David Fitzpatrick.       | 1758. "     | Edwy E. Hammond.     |
| 29. "     | Nathan E. Haskell.       | 1759. "     | George Conway.       |
| 30. "     | Stephen Barnes.          | 1760. "     | George G. Egory.     |
| 1. "      | George N. Churchill.     | 1761. "     | Allen Howes.         |
| 2. "      | Henry Peterson.          | 1762. "     | Edward Stetson.      |
| 3. "      | Francis E. Hodsdon.      | 1763. "     | Jos. W. Hill.        |
| 4. "      | Jacob F. Bates.          | 1764. "     | George Heely.        |

|       |       |                        |       |       |                        |
|-------|-------|------------------------|-------|-------|------------------------|
| 1765. | Capt. | Daniel W. Reed.        | 1825. | Capt. | Baker McNear, Jr.      |
| 1766. | "     | Daniel B. Hatch.       | 1826. | "     | George Nordenbott.     |
| 1767. | "     | Nathau G. Glover.      | 1827. | "     | Edwin D. Wadsworth.    |
| 1768. | "     | Joel W. Drisko.        | 1828. | "     | John T. Williams.      |
| 1769. | "     | Theophilus D. Newbold. | 1829. | Mate  | Thomas Smith.          |
| 1770. | "     | Calvin Ryder.          | 1830. | Capt. | Elbridge G. Doane, J.  |
| 1771. | "     | Mark D. Ames.          | 1831. | Mate  | Charles Pamell.        |
| 1772. | "     | John P. Hitch.         | 1832. | Capt. | John B. Somers.        |
| 1773. | "     | John Miller.           | 1833. | "     | Philip D. Yates.       |
| 1774. | "     | Pyam L. Gilkey.        | 1834. | "     | Joseph S. Hallett.     |
| 1775. | "     | James W. Ford.         | 1835. | "     | Joseph B. Reed.        |
| 1776. | "     | William Lang.          | 1836. | "     | James W. Safford.      |
| 1777. | "     | Jacob C. Coombs.       | 1837. | "     | Melbourne P. Smith.    |
| 1778. | "     | Joseph W. Davis.       | 1838. | "     | John M. Perry.         |
| 1779. | "     | Jacob G. Loring.       | 1839. | "     | Charles Babson.        |
| 1780. | "     | John C. Nelson.        | 1840. | "     | Loammi R. Ross.        |
| 1781. | "     | Adolph C. Gieschen.    | 1841. | "     | Melville H. Walket.    |
| 1782. | "     | Benjamin H. Moss.      | 1842. | "     | Elbridge G. Conant.    |
| 1783. | "     | Charles Baker.         | 1843. | "     | John M. Card.          |
| 1784. | "     | Daniel Forbes.         | 1844. | "     | William W. Rhoden.     |
| 1785. | "     | Hans Hansen.           | 1845. | "     | David Goodale.         |
| 1786. | "     | Jeremiah P. Potter.    | 1846. | "     | John H. Evans.         |
| 1787. | "     | John C. Townsend.      | 1847. | "     | Henry Avery.           |
| 1788. | "     | Eben Staples.          | 1848. | "     | James Brown.           |
| 1789. | "     | Jesse D. Hawkins.      | 1849. | Mate  | George M. Pulisimus.   |
| 1790. | "     | Geo. W. Parrott.       | 1850. | Capt. | John Graham.           |
| 1791. | "     | Mark Shaw.             | 1851. | "     | Henry C. Reed.         |
| 1792. | "     | Eldridge G. Hewes.     | 1852. | "     | Eleazer Scudder.       |
| 1793. | "     | Abiathar Doane.        | 1853. | "     | Benjamin Tay.          |
| 1794. | "     | James Bolger.          | 1854. | "     | John D. Brooks.        |
| 1795. | "     | Henry C. Lightbourne.  | 1855. | "     | Alfred A. Ginn.        |
| 1796. | "     | William P. Stone.      | 1856. | "     | Benjamin B. Naylor.    |
| 1797. | "     | Augustus Lanpher.      | 1857. | "     | Duncan R. Norvell.     |
| 1798. | "     | Simon M. Dodge.        | 1858. | "     | Thomas S. Bigley.      |
| 1799. | "     | Lowell Talbot.         | 1859. | "     | John Greif.            |
| 1800. | "     | Saml. II. Doane.       | 1860. | "     | Thomas Pennel.         |
| 1801. | "     | William Pearce.        | 1861. | "     | Dalhousie Millar.      |
| 1802. | "     | Simon R. Ulmer.        | 1862. | "     | Robert P. Conk.        |
| 1803. | "     | John Hutchinson.       | 1863. | "     | Jabes C. Norton.       |
| 1804. | "     | Mark D. Means.         | 1864. | "     | John Dunze.            |
| 1805. | "     | Geo. C. Williams.      | 1865. | "     | Geo. T. Avery.         |
| 1806. | "     | John E. Chase.         | 1866. | "     | Edwin Ellis.           |
| 1807. | "     | Nelson Hammond.        | 1867. | "     | John Biddle.           |
| 1808. | "     | Leonard Montgomery.    | 1868. | "     | Chas. H. Peniston.     |
| 1809. | "     | William W. Chase.      | 1869. | "     | William R. Hill.       |
| 1810. | "     | Allen Noyes.           | 1870. | Mate  | Alfred Ross.           |
| 1811. | "     | Samuel B. Soule.       | 1871. | Capt. | Gerard Waefelaer.      |
| 1812. | "     | William Gerard.        | 1872. | "     | Julius Nilson.         |
| 1813. | "     | Zaccheus Knowles.      | 1873. | "     | Elias Elwell.          |
| 1814. | "     | Geo. Dunham.           | 1874. | "     | Albert D. Barnard.     |
| 1815. | "     | Charles Hodgson.       | 1875. | "     | Francis J. Philman.    |
| 1816. | "     | Joseph Hampton.        | 1876. | "     | George W. Lynch.       |
| 1817. | Mate  | Joseph P. Ralph.       | 1877. | Mate  | Arthur H. Gladd.       |
| 1818. | "     | John Tucker.           | 1878. | Capt. | Benjamin A. Wing.      |
| 1819. | Capt. | William H. McGregor.   | 1879. | "     | Joe. A. C. Prudde.     |
| 1820. | "     | Edward Murray.         | 1880. | "     | Nathaniel L. McLellan. |
| 1821. | "     | Charles Adams.         | 1881. | "     | Frank J. Loder.        |
| 1822. | "     | Joseph M. Faulkner.    | 1882. | "     | Edwin T. Amesbury.     |
| 1823. | "     | Samuel A. Partridge.   | 1883. | "     | Henry L. Sparrow.      |
| 1824. | "     | Mark P. McElhinney.    | 1884. | "     | Thomas Musch.          |

|           |                        |       |       |                         |
|-----------|------------------------|-------|-------|-------------------------|
| Capt.     | Wm. S. Tyler.          | 1945. | Capt. | Wheelock Coomba.        |
| "         | Wm. S. Crockett.       | 1946. | "     | Robert Barstow.         |
| "         | Erastus A. Payson.     | 1947. | "     | Frederick T. Hotchkiss. |
| "         | Eben T. Harmon.        | 1948. | Mate  | Hamilton Bingham.       |
| "         | Harman C. Torjusen.    | 1949. | Capt. | John M. Ekerman.        |
| "         | Lorin M. Kuhnle.       | 1950. | "     | Joseph W. Richardson.   |
| "         | Samuel F. Phillips.    | 1951. | "     | James G. Smith.         |
| "         | Thos. F. Lee.          | 1952. | "     | Calvin Corning.         |
| "         | Daniel Lowell.         | 1953. | "     | Edward F. Hilton.       |
| "         | Horace Staples.        | 1954. | "     | Theodore Boreham.       |
| "         | John Havlin.           | 1955. | "     | Joseph A. Boyden.       |
| "         | Simeon M. Walls.       | 1956. | "     | Charles A. Wheeler.     |
| "         | Joshua D. Allen.       | 1957. | "     | William Ross.           |
| "         | Joseph V. Peters.      | 1958. | "     | Mariner W. Ackley.      |
| Mate      | Joseph L. Gross.       | 1959. | "     | James H. Parker.        |
| Capt.     | Gustavus A. Dickmarz.  | 1960. | "     | George Hancock.         |
| "         | Wilson C. Nickels.     | 1961. | "     | John H. White.          |
| "         | Victor J. Young.       | 1962. | "     | Marville Z. Lane.       |
| "         | John N. Francis.       | 1963. | "     | James McNair.           |
| "         | Geo. R. Line.          | 1964. | "     | Henry Smith.            |
| "         | Caleb S. Duell.        | 1965. | "     | Rhodolphus Pendleton.   |
| 3. Mate   | Wm. B. Thompson.       | 1966. | "     | Johan. J. F. Meyers.    |
| 1. Capt.  | Wm. Dinsdale.          | 1967. | Mate  | Henry T. Blake.         |
| 3.        | " Chas. H. Lyon, Jr.   | 1968. | "     | George Matson.          |
| 9.        | " Chas. Reel.          | 1969. | Capt. | Benj. G. Palmer.        |
| 0.        | " Thos. D. Galleshaw.  | 1970. | "     | Thos. S. Purrington.    |
| 1.        | " Richard Lee.         | 1971. | "     | Thomas J. Johnson.      |
| 2.        | " Wm. G. Treworgy.     | 1972. | "     | Robert B. Thurston.     |
| 8.        | " Alexander P. Strout. | 1973. | "     | Amos N. Lowden.         |
| 4.        | " Wm. H. Mardenborough | 1974. | "     | Nils Anderson.          |
| 5.        | " Israel Dexter.       | 1975. | "     | George H. Wilson.       |
| 6.        | " Elkanah T. Shaw.     | 1976. | "     | Joseph Godfrey.         |
| 17.       | " John F. McLellan.    | 1977. | "     | Allen H. Corson.        |
| 18.       | " Edwin W. Partridge.  | 1978. | "     | James H. Gowdy.         |
| 19.       | " Chas. B. Pray.       | 1979. | "     | Wm. O. Johnson.         |
| 20. Mate  | Chas. B. Dickman.      | 1980. | "     | Wm. H. Chisham.         |
| 21. Capt. | Francis Freeto.        | 1981. | "     | Geo. W. Bailey.         |
| 22.       | " John R. Lavender.    | 1982. | "     | Wm. M. Munroe.          |
| 23.       | " John H. Jackson.     | 1983. | "     | Joseph Eaton.           |
| 24.       | " Lewis Mitchell.      | 1984. | "     | Chas. F. Williams.      |
| 25.       | " Elias P. Sleeper.    | 1985. | Mate  | Peter Lawson.           |
| 26.       | " Wm. P. Perkins.      | 1986. | Capt. | John Masson.            |
| 27.       | " Jas. A. Johnston.    | 1987. | "     | Saml. Bartlett, Jr.     |
| 28.       | " Jas. O. Jarvis.      | 1988. | "     | Hendrick Wade.          |
| 29.       | " Austin Millar.       | 1989. | "     | Johnathan Cole.         |
| 30.       | " Josiah D. Hatch.     | 1990. | "     | Andrew Lillia.          |
| 31.       | " Richard Lowerison.   | 1991. | "     | Wm. D. Benson.          |
| 32.       | " Peter C. Kummerling. | 1992. | "     | William Strickland.     |
| 33. Capt. | Dudley Young.          | 1993. | "     | George N. Hubbard.      |
| 34.       | " Adoniram J. Packard. | 1994. | "     | John Lovitt.            |
| 35.       | " Silas H. Mariner.    | 1995. | "     | Edward Hall.            |
| 36.       | " Edward Gooding.      | 1996. | "     | John R. Hall.           |
| 37.       | " Hezekiah F. Coueyen. | 1997. | "     | Geo. O. Haskell.        |
| 38.       | " Geo. L. Ulrick.      | 1998. | "     | Hinrich Wehmann.        |
| 39.       | " Bartlet Covell.      | 1999. | "     | Uriah B. Fisk.          |
| 40.       | " John Sheridan.       | 2000. | "     | David B. Hobart.        |
| 41.       | " John C. Ballou.      | 2001. | "     | Charles H. Matthews.    |
| 42.       | " Joel S. Davis.       | 2002. | "     | John Johnson.           |
| 43.       | " Joseph B. Parker.    | 2003. | "     | William W. Rivera.      |
| 44.       | " John N. Gardner.     | 2004. | "     | Barnabas Francis.       |

|       |                         |       |                          |
|-------|-------------------------|-------|--------------------------|
| 2005. | Capt. Ass Lothrop.      | 2065. | Capt. Wm. A. Rogers.     |
| 2006. | " Sylvester B. Lothrop. | 2066. | " Chas. H. Choate.       |
| 2007. | " Herman Bahra.         | 2067. | " Charles A. Gardner.    |
| 2008. | " Edward C. Williams.   | 2068. | " James Page.            |
| 2009. | " Frederick R. Huntly.  | 2069. | " Pearson N. Preble.     |
| 2010. | " George Mitchell.      | 2070. | " William H. Mills.      |
| 2011. | " James W. Burgess.     | 2071. | " Jeremiah P. Hatch.     |
| 2012. | " Elias Darling.        | 2072. | " Arcene Lemieux.        |
| 2013. | " Henry A. Bourne.      | 2073. | " John Dunbar.           |
| 2014. | " Henry L. Gregg.       | 2074. | " Christopher C. Dailey. |
| 2015. | " Thos. Ewen.           | 2075. | " Robert Dill.           |
| 2016. | " Isaac N. Hathaway.    | 2076. | " Orlando Johnson.       |
| 2017. | " Edward A. Marwick.    | 2077. | " William Johnson.       |
| 2018. | " George Tilley.        | 2078. | " Jas. B. Fisher.        |
| 2019. | " William J. Logan.     | 2079. | " Davis B. Berse.        |
| 2020. | " Michael Foley.        | 2080. | " Hartson Hallett, 2d.   |
| 2021. | " John W. Crowther.     | 2081. | " John Berry.            |
| 2022. | " Samuel S. Hammond.    | 2082. | " Andrew Kaye.           |
| 2023. | " Francis E. Tuzo.      | 2083. | " John Jones.            |
| 2024. | " Jesse Perry.          | 2084. | " Thos. J. Willard.      |
| 2025. | " James Warren.         | 2085. | " Thompson Chapman.      |
| 2026. | " Jeremiah P. Connor.   | 2086. | " Horatio N. Baker.      |
| 2027. | " Wm. K. Whittemore.    | 2087. | " Joseph D. Hoff.        |
| 2028. | " John L. Fanno.        | 2088. | " Willard Cousens.       |
| 2029. | " Albert Shute.         | 2089. | " Wm. W. Collins.        |
| 2030. | " John E. Keuney.       | 2090. | " Geo. Campbell.         |
| 2031. | " Jabez A. Amsbury.     | 2091. | " Isaac Hutchinson.      |
| 2032. | " Le Grand Holdridge.   | 2092. | " Daniel Ross.           |
| 2033. | Mate Hollis I. Higgins. | 2093. | " John Havighorst.       |
| 2034. | Capt. Henry J. Green.   | 2094. | " Geo. W. Kumball.       |
| 2035. | " Levi L. Jump.         | 2095. | " Seth Cole.             |
| 2036. | " George E. Horton.     | 2096. | " Bela B. Berry.         |
| 2037. | " William C. Whirlow.   | 2097. | " Justus Loomer.         |
| 2038. | " William Hitchborn.    | 2098. | " David G. Ames.         |
| 2039. | " William Sinnett.      | 2099. | " Benj. F. Bucknam.      |
| 2040. | " Charles E. Lord.      | 2100. | " Eben A. Thorndike.     |
| 2041. | " George J. Barker.     | 2101. | " James N. Carver.       |
| 2042. | " Thomas F. West.       | 2102. | " Thaddeus H. Walsh.     |
| 2043. | " Jefferson Pendleton.  | 2103. | " Wesley H. Squire       |
| 2044. | " Edward Y. Wicks.      | 2104. | " Edward H. Lee.         |
| 2045. | " John Hassell.         | 2105. | " Geo. W. Blatchford.    |
| 2046. | " Ab'l Beckwith.        | 2106. | " Daniel Corbett.        |
| 2047. | " Martin Burns.         | 2107. | " Philip Burgess.        |
| 2048. | " Joseph Creighton.     | 2108. | " William B. Smith.      |
| 2049. | " Andrew S. Ure.        | 2109. | " David Smith.           |
| 2050. | " Charles S. Dunning.   | 2110. | " John A. Leeman.        |
| 2051. | " Albert Devereaux,     | 2111. | " Thomas Tobin.          |
| 2052. | " Isaac Beauchamp.      | 2112. | " Edward Corbett.        |
| 2053. | " Winthrop Sears.       | 2113. | " Ralph Messenger.       |
| 2054. | " Charles Stevens.      | 2114. | " August F. Petrowsky.   |
| 2055. | " James L. How.         | 2115. | " Samuel R. Ashford.     |
| 2056. | " Michael Cronan.       | 2116. | " Thomas L. Libby.       |
| 2057. | " William F. Humphrey.  | 2117. | " Isaac C. Park.         |
| 2058. | " James H. Lakeman.     | 2118. | " Henry A. Patterson.    |
| 2059. | " Francis E. Cumming.   | 2119. | " Clifford L. Stowers.   |
| 2060. | " Clark Sherman.        | 2120. | " Wm. L. Foster.         |
| 2061. | " Rodman S. Hallett.    | 2121. | " Richard E. Mortley.    |
| 2062. | " Horatio Allen.        | 2122. | " Obed Pettegrew.        |
| 2063. | " John Fredericks.      | 2123. | " Bland Tobin.           |
| 2064. | " Thomas Earl.          | 2124. | " Oliver Kelly, Jr.      |

|                               |                              |
|-------------------------------|------------------------------|
| 5. Capt. Jas. H. Hutchinson.  | 2185. Capt. William McLeod.  |
| 6. Mate Charles B. Norton.    | 2186. " Thos. M. Cunningham. |
| 7. Capt. Jonathan C. Nickels. | 2187. " Robert Osburne.      |
| 8. " Lemuel Hobbs.            | 2188. " John K. Filgeon.     |
| 9. " Roland York.             | 2189. " Isaac R. Staples.    |
| 10. " Francis L. Southack.    | 2190. " Henry Wicks.         |
| 11. " Seth N. Ellis.          | 2191. " Josiah N. Knowles.   |
| 12. " Benj. R. MacLaurin.     | 2192. " Charles Lee Moses.   |
| 13. " Hiram B. Bangs.         | 2193. " William W. Jones.    |
| 14. " James M. Butler.        | 2194. " John J. Walker.      |
| 15. " Joseph C. Graham.       | 2195. " Isaac Dart.          |
| 16. " Thomas McKenzie.        | 2196. " Alfred M. Lunt.      |
| 17. " Wm. F. Blanchard.       | 2197. " Robert M. Crossley.  |
| 18. " David Snow.             | 2198. " William Lovell.      |
| 19. " James Bain.             | 2199. " George T. Hammond.   |
| 20. " Isaac H. Varney.        | 2200. " John A. Campbell.    |
| 1. " Joseph McCulloch.        | 2201. " Hiram Edgett.        |
| 2. " Joshua C. Sinclair.      | 2202. " Christian Peterson.  |
| 3. " Maynard Bearse.          | 2203. " Gustavis Hardison.   |
| 4. " John S. Sargent.         | 2204. " Nathan S. Tracy.     |
| 5. " George C. Small.         | 2205. " James F. Cook.       |
| 6. " Bennet Dunbar.           | 2206. " Ambrose Rumball.     |
| 7. " Wm. S. Nickels.          | 2207. " Olferd A. Janssen.   |
| 8. " Alanson Ford.            | 2208. " Matthew Murphy.      |
| 9. " George C. Haskell.       | 2209. " James Salter.        |
| 0. " James J. Perry.          | 2210. " John Fitzgerald.     |
| 1. " Charles E. Coker.        | 2211. " Benjamin D. Clark.   |
| 2. " Wm. M. Edgerton.         | 2212. " Charles W. Beekman.  |
| 3. " Sidney S. Wicks.         | 2213. " Newell Robbins.      |
| 4. " George Douglas.          | 2214. " Lysander Chase.      |
| 5. " Joseph Evans.            | 2215. " Obed Baker, Jr.      |
| 6. " Edward D. Blanchard.     | 2216. " Darius E. Robbins.   |
| 7. " John Crosby.             | 2217. " William Clark.       |
| 8. " Edward Smith.            | 2218. " Jacob R. Hall.       |
| 9. " John McDougall.          | 2219. " Benjamin R. Redman.  |
| 0. " Andrew J. Phinney.       | 2220. " Elisha Lanpher.      |
| 1. " Charles W. Harriman      | 2221. " Charles N. Dixon.    |
| 2. Mate Christian Olsen.      | 2222. " Andrew J. Freese.    |
| 3. Capt. Reuben Fulton.       | 2223. " Alphonso A. Duncan.  |
| 4. " Edwin Baxter.            | 2224. " Chas. H. Chase.      |
| 5. " Nathaniel Bradford.      | 2225. " James B. Hatch.      |
| 6. " Moses H. Small.          | 2226. " Alexander McDonald.  |
| 7. " Wm. P. Swasey.           | 2227. " Samuel C. Joy.       |
| 8. " William De Waters.       | 2228. " Angus McDonald.      |
| 9. " Henry Henderson.         | 2229. " Hugh M. Gregory.     |
| 0. " Joseph Gilchrist.        | 2230. " William P. Lewis.    |
| 1. " James H. Wicks.          | 2231. " Barnard Luce.        |
| 2. " Henry Taylor.            | 2232. " Reuben E. Swift.     |
| 3. " Amariah Leland.          | 2233. " William E. Boyd.     |
| 4. " Lyman D. Rogers.         | 2234. " Richard Sheppard.    |
| 5. " James E. Bradley.        | 2235. " Isaiah A. Allen.     |
| 6. " Wm. Reynolds.            | 2236. " Freeman K. Small     |
| 7. " George Clow.             | 2237. " Michael Collins.     |
| 8. " Joshua Waite.            | 2238. " John Toye.           |
| 9. " Darius Doak.             | 2239. " Joseph A. Thomson.   |
| 0. " Donald McInnes.          | 2240. " James Lennerton.     |
| 1. " Neil McKay.              | 2241. " Robert Hamilton.     |
| 2. " David Churchill.         | 2242. " George W. Palmer.    |
| 3. " John Poole.              | 2243. " Orien H. Leland.     |
| 4. " Lorenzo Pendleton.       | 2244. " Johnson Archibald.   |

|       |       |                         |       |       |                         |
|-------|-------|-------------------------|-------|-------|-------------------------|
| 2245. | Capt. | Willard H. Townsley.    | 2305. | Capt. | Lawrence Norden.        |
| 2246. | "     | David S. Crerar.        | 2306. | "     | John Coffin.            |
| 2247. | "     | Exmouth Davison.        | 2307. | "     | Wm. E. Toye.            |
| 2248. | "     | Jonathan Bray           | 2308. | "     | Goeth S. Wiley.         |
| 2249. | Mate  | Elbridge G. Blanchard.  | 2309. | "     | John P. Tenney.         |
| 2250. | Capt. | Collin C. Benson.       | 2310. | "     | Charles W. Adams.       |
| 2251. | "     | Peter Graffam.          | 2311. | "     | Conrad M. F. Brussel.   |
| 2252. | "     | William Bradford.       | 2312. | Mate  | James Sullivan.         |
| 2253. | "     | David P. Marshall.      | 2313. | Capt. | James Crane.            |
| 2254. | "     | Henry L. Seger.         | 2314. | "     | Calvin S. Cotton.       |
| 2255. | "     | John Saunders.          | 2315. | "     | Giovani B. de Angelini. |
| 2256. | "     | Benjamin Gulliver.      | 2316. | "     | Patrick Doyle.          |
| 2257. | "     | Marshall A. Ellingwood. | 2317. | "     | Judson Philbrook.       |
| 2258. | Mate  | John H. Miller.         | 2318. | Mate  | Edward F. Cole.         |
| 2259. | Capt. | Samuel Thompson.        | 2319. | Capt. | William Part.           |
| 2260. | "     | Edward T. Nyc.          | 2320. | "     | Frederick Wille.        |
| 2261. | "     | Charles T. Baker.       | 2321. | "     | Robert Heines.          |
| 2262. | "     | James E. Webber.        | 2322. | "     | Denny M. Humphreys.     |
| 2263. | "     | John C. Morong.         | 2323. | "     | Wells Gow.              |
| 2264. | "     | Lorenzo W. Lovejoy.     | 2324. | "     | Joseph W. Catharine.    |
| 2265. | "     | William N. Talbot.      | 2325. | "     | William Mahon.          |
| 2266. | "     | Vinal G. Lanpher.       | 2326. | "     | Henry Wilkens.          |
| 2267. | "     | Charles Sinclair.       | 2327. | "     | Samuel Nelson.          |
| 2268. | "     | Andrew Smith.           | 2328. | "     | Robert Kirkaldy.        |
| 2269. | "     | Benjamin A. Gardner.    | 2329. | "     | Thomas Churchill.       |
| 2270. | "     | Robert J. Reeve.        | 2330. | "     | Samuel J. Foster.       |
| 2271. | "     | Rober Wilson.           | 2331. | "     | John Young.             |
| 2272. | "     | Alfred D. Cole.         | 2332. | "     | George W. Pike.         |
| 2273. | "     | Joseph Taylor.          | 2333. | "     | Warren B. Hamon.        |
| 2274. | "     | Fred. M. Lambert, Jr.   | 2334. | "     | Asa Coalfleet.          |
| 2275. | "     | Joseph T. Berry.        | 2335. | "     | John Coakley.           |
| 2276. | "     | Caleb W. Haskell.       | 2336. | "     | David W. Swett.         |
| 2277. | "     | John Lewey.             | 2337. | "     | John C. Henery.         |
| 2278. | "     | Frederick Morris.       | 2338. | "     | Nathaniel Hathorn.      |
| 2279. | "     | Reuben Baker.           | 2339. | "     | Joseph A. Southard.     |
| 2280. | "     | Chas. T Kinner.         | 2340. | "     | William Berry.          |
| 2281. | "     | Daniel McDonald.        | 2341. | "     | Frank Wood.             |
| 2282. | "     | Joseph G. Stover.       | 2342. | "     | Robert Simonson.        |
| 2283. | "     | James H. Hewitt.        | 2343. | "     | Frederick McCumber.     |
| 2284. | "     | Thomas Richan.          | 2344. | "     | George Allen.           |
| 2285. | "     | Wm. H. Embleton.        | 2345. | "     | Benjamin F. Flinn.      |
| 2286. | "     | Bradford Griffin.       | 2346. | "     | Schuyler W. Clark.      |
| 2287. | "     | Heinrich Bohlen.        | 2347. | "     | William S. Smith.       |
| 2288. | "     | Andrew Agen.            | 2348. | "     | George H. Atwood.       |
| 2289. | "     | Kenneth McKenzie.       | 2349. | "     | Matthews A. Williams.   |
| 2290. | "     | John Waters.            | 2350. | "     | Theodore C. Jacobs.     |
| 2291. | "     | Amos D. Healy.          | 2351. | "     | William L. Thompson.    |
| 2292. | "     | George H. Marks.        | 2352. | "     | Nelson Card.            |
| 2293. | "     | Henry N. Farr.          | 2353. | "     | Job Small.              |
| 2294. | "     | Winslow A. Jordan.      | 2354. | "     | Hollis Cattigan.        |
| 2295. | "     | George P. Clark.        | 2355. | "     | Louis Campostano.       |
| 2296. | "     | Ebenezer Phinney.       | 2356. | "     | Henry M. A. Conti.      |
| 2297. | "     | Charles B. Elwood.      | 2357. | "     | John Waycott.           |
| 2298. | "     | Samuel E. Shepherd.     | 2358. | "     | John T. Hicks.          |
| 2299. | "     | Benjamin Russell.       | 2359. | "     | Nils P. Miller.         |
| 2300. | "     | William A. Porter.      | 2360. | "     | Robert L. M. Jones.     |
| 2301. | "     | William H. Cashon.      | 2361. | "     | Christopher Ellery.     |
| 2302. | "     | Alonzo D. Perkins.      | 2362. | Mate  | William Green.          |
| 2303. | "     | James S. Clark.         | 2363. | Capt. | David Taft.             |
| 2304. | "     | Peter Landry.           | 2364. | "     | Christopher Godfrey.    |

|       |       |                        |       |       |                        |
|-------|-------|------------------------|-------|-------|------------------------|
| 2365. | Capt. | Frederick G. Lucas.    | 2425. | Capt. | George Vigna.          |
| 2366. | "     | George B. Mott.        | 2426. | "     | John Harvey.           |
| 2367. | "     | Parsons Albee.         | 2427. | "     | William H. Peniston    |
| 2368. | "     | Abijah C. Stover.      | 2428. | "     | Ambrose Snow.          |
| 2369. | "     | John McDonald.         | 2429. | "     | John R. Bryant.        |
| 2370. | "     | Horace Devereux.       | 2430. | "     | Thomas Ingemar.        |
| 2371. | "     | Madison Keller.        | 2431. | "     | James Sinclair.        |
| 2372. | "     | John O. Sprague.       | 2432. | "     | George T. Pearson.     |
| 2373. | "     | Robert Limeburner.     | 2433. | "     | Cyrus Sears.           |
| 2374. | "     | Charles G. Chadbourne. | 2434. | "     | Thomas Beaser.         |
| 2375. | "     | Charles B. McQuin.     | 2435. | "     | Joseph H. Torrey.      |
| 2376. | "     | Wilken Breckwoldt.     | 2436. | "     | Alfred Black.          |
| 2377. | "     | Joseph McCart.         | 2437. | "     | Benjamin Llewellyn.    |
| 2378. | "     | Thomas R. Parsons.     | 2438. | "     | Charles F. Cunningham. |
| 2379. | "     | Joseph D. Steele.      | 2439. | "     | Joseph B. McAlevy.     |
| 2380. | "     | John W. Perkins.       | 2440. | "     | Joseph L. Wallace.     |
| 2381. | "     | Edward Smith.          | 2441. | "     | Benj. B. Shackford.    |
| 2382. | "     | Rufus Harriman.        | 2442. | "     | William C. Henderson.  |
| 2383. | "     | George W. Homans.      | 2443. | Mate  | Norman Chatfield.      |
| 2384. | "     | George Morwick.        | 2444. | Capt. | Hiram N. Haines.       |
| 2385. | "     | Charles C. Ray.        | 2445. | "     | George W. Coggins.     |
| 2386. | "     | Thomas W. Lawson.      | 2446. | "     | Manroe Murphy.         |
| 2387. | "     | John P. Kohl.          | 2447. | "     | William Farrell.       |
| 2388. | "     | Johan H. Schweichel.   | 2448. | "     | Walter W. Darrell.     |
| 2389. | "     | Heurich Bischoff.      | 2449. | "     | Isaac Hopkins.         |
| 2390. | Mate  | Henry P. Ellis.        | 2450. | Mate  | John McCarthy.         |
| 2391. | Capt. | Charles D. Coffin.     | 2451. | Capt. | George C. Crooker.     |
| 2392. | "     | Frederick A. Small.    | 2452. | "     | John K. Bonfield.      |
| 2393. | "     | Rowland T. Delano.     | 2453. | "     | Henry Plaster.         |
| 2394. | "     | Daniel J. Strout.      | 2454. | "     | Israel H. Goudey.      |
| 2395. | "     | Charles H. Robinson.   | 2455. | "     | Amara Bartlett, Jr.    |
| 2396. | "     | William Young.         | 2456. | "     | William H. Gooding.    |
| 2397. | "     | George C. Chapman.     | 2457. | "     | Benj. A. Pillsbury.    |
| 2398. | "     | Peter Sexton.          | 2458. | Mate  | Samuel Moulton.        |
| 2399. | "     | James Ferguson.        | 2459. | Capt. | Daniel McLaughlin.     |
| 2400. | "     | George H. Chisholm.    | 2460. | "     | Jacob S. Langthorn.    |
| 2401. | "     | Nathan A. Reed.        | 2461. | "     | Joseph S. Clyne.       |
| 2402. | "     | Isiah Lewis.           | 2462. | "     | Crawford Staples.      |
| 2403. | "     | Silas H. Greenleaf.    | 2463. | "     | Elbridge Webster.      |
| 2404. | "     | Edwin Fry.             | 2464. | "     | William H. Carter.     |
| 2405. | "     | Donald B. McIntosh.    | 2465. | "     | Charles Bartlett.      |
| 2406. | "     | Andrew L. Carver.      | 2466. | "     | Orville Cooper.        |
| 2407. | "     | Hiram Smith.           | 2467. | "     | Daniel H. Howard.      |
| 2408. | "     | Joseph B. Barrettiaga. | 2468. | "     | Samuel T. Connick.     |
| 2409. | "     | Joseph B. French.      | 2469. | "     | Alex. H. Holway.       |
| 2410. | "     | David M. Cropley.      | 2470. | "     | Samuel W. Overton.     |
| 2411. | "     | Josiah Crosby.         | 2471. | "     | Abel K. Williams.      |
| 2412. | "     | Milton Griffith.       | 2472. | "     | Andrew Armstrong.      |
| 2413. | "     | Richard C. Mears.      | 2473. | "     | Zenas C. Flinn.        |
| 2414. | "     | Augustus W. Durmant.   | 2474. | "     | Jesse P. Frietta.      |
| 2415. | "     | George W. Reed.        | 2475. | "     | Frederick Reimer.      |
| 2416. | "     | John C. Cook.          | 2476. | "     | Henry W. Ferguson.     |
| 2417. | "     | John H. Urquhart.      | 2477. | Mate  | Emil A. A. Petrowaky.  |
| 2418. | "     | Charles P. Weaver.     | 2478. | Capt. | George W. Staples.     |
| 2419. | "     | William B. Staples.    | 2479. | "     | James B. Nichols.      |
| 2420. | "     | Stillman W. Snow.      | 2480. | "     | Joseph Roche.          |
| 2421. | "     | James S. Little.       | 2481. | "     | Enoch J. Townsend.     |
| 2422. | "     | Aaron H. Small.        | 2482. | "     | Lucius E. Corson.      |
| 2423. | "     | Silas B. Greenman.     | 2483. | "     | Bennett W. Nelson.     |
| 2424. | "     | Henry A. Hichborn.     | 2484. | "     | Allen A. Lane.         |

|       |       |                       |        |       |                        |
|-------|-------|-----------------------|--------|-------|------------------------|
| 2485. | Capt. | John D. Carlisle.     | 2545.  | Mate  | William A. Osborn.     |
| 2486. | "     | Thomas E. Kelley.     | 2546.  | Capt. | Chas. M. Lane.         |
| 2487. | "     | Charles Smith.        | 2547.  | "     | Chas. S. Marsh.        |
| 2488. | "     | Richard N. Overton.   | 2548.  | "     | Cyrus B. Averill.      |
| 2489. | "     | Lawrence W. Brown.    | 2549.  | "     | George W. Hulse.       |
| 2490. | "     | Frederick G. Lubker.  | 2550.  | "     | Amasa Arey.            |
| 2491. | "     | Samuel A. Stowers.    | 2551.  | "     | Hanson Gregory, Jr.    |
| 2492. | Mate  | James H. Wilson.      | 2552.  | "     | William J. Burnham.    |
| 2493. | Capt. | Edgar Chase.          | 2553.  | "     | David W. Potter.       |
| 2494. | "     | Eleazer Crabtree.     | 2554.  | "     | William J. Halsey.     |
| 2495. | "     | William Anderson.     | 2555.  | "     | William Kilton.        |
| 2496. | "     | Samuel Maddocka.      | 2556.  | "     | Robert D. Perry.       |
| 2497. | Mate  | William Hart.         | 2557.  | "     | Frederick A. Allen.    |
| 2498. | Capt. | George Reed.          | 2558.  | Mate  | Ernest R. Domansky.    |
| 2499. | "     | John F. James.        | 2559.  | Capt. | Thomas McLeavy.        |
| 2500. | "     | John H. Yeaton.       | 2560.  | "     | George L. Snelling.    |
| 2501. | "     | Benj. F. Snow.        | 2561.  | "     | Robert Edgerly.        |
| 2502. | "     | Osander W. Mayhew.    | 2562.  | "     | Chas. F. Smith.        |
| 2503. | "     | Robert C. Denham.     | 2563.  | "     | Gunder Krabel.         |
| 2504. | "     | Charles E. Mills.     | 2564.  | Mate  | Wm. H. Davis.          |
| 2505. | "     | John Simpson.         | 2565.  | Capt. | Jasper N. Nichols.     |
| 2506. | "     | George W. Harrington. | 2566.  | "     | William R. Eaton.      |
| 2507. | "     | Joseph Webster.       | 2567.  | "     | Leander Day.           |
| 2508. | "     | Edward C. Bowers.     | 2568.  | "     | Titus C. Mather.       |
| 2509. | "     | Malcolm J. Wallace.   | 2569.  | "     | Richard S. Bourne.     |
| 2510. | "     | Aaron S. Long.        | 2570.  | "     | Hilbert H. Park.       |
| 2511. | "     | George W. Bartlett.   | 2571.  | "     | Benjamin Bradford.     |
| 2512. | "     | James R. Allen.       | 2572.  | "     | Henry Lachak.          |
| 2513. | "     | Holmes W. Ramsdell.   | 2573.  | "     | Robert Hardy.          |
| 2514. | "     | William D. Colcord.   | 2574.  | "     | Hiram C. Raymond.      |
| 2515. | "     | William Myers.        | 2575.  | "     | Frederick F. Burbidge. |
| 2516. | "     | James Peterson.       | 2576.  | "     | William Hatten.        |
| 2517. | "     | Albert Carter.        | 2577.  | "     | William B. Stanley.    |
| 2518. | "     | Willard Ginn.         | 2578.  | "     | Walter Merriman.       |
| 2519. | "     | John H. Seehusen.     | 2579.  | "     | Manly H. Lancaster.    |
| 2520. | "     | Jurgen Rickmers.      | 2580.  | "     | Joshua A. Chase.       |
| 2521. | "     | Emery Berry.          | 2581.  | "     | George Hardy.          |
| 2522. | "     | John O. Crowell.      | *2582. | "     | John Shields.          |
| 2523. | "     | Mills Edwards.        | 2583.  | "     | Elijah Norton.         |
| 2524. | "     | George L. Holmes.     | 2584.  | "     | William S. Willson.    |
| 2525. | "     | Anton E. Broberg.     | 2585.  | "     | George E. Lane.        |
| 2526. | "     | Joshua Hopkins.       | 2586.  | "     | Hiram Coalfield.       |
| 2527. | "     | Jerome B. McDonald.   | 2587.  | "     | Joseph K. Terry.       |
| 2528. | "     | John Lourie.          | 2588.  | "     | Albert Davidson.       |
| 2529. | "     | William R. Brown.     | 2589.  | "     | Otis P. Rumball.       |
| 2530. | "     | William P. Harvey.    | 2590.  | "     | Richard Vevers.        |
| 2531. | "     | Benjamin D. Baxter.   | 2591.  | Mate  | Chas. W. Owen.         |
| 2532. | "     | James N. Bowman.      | 2592.  | Capt. | John Sanborn.          |
| 2533. | "     | Neils J. Piil.        | 2593.  | "     | Joseph G. Brown.       |
| 2534. | "     | Edwin H. Tracy.       | 2594.  | Mate  | James D. Moore.        |
| 2535. | Mate  | William H. Hough.     | 2595.  | Capt. | George F. Wilkins.     |
| 2536. | Capt. | Joseph J. Ball.       | 2596.  | "     | Oliver Sleeper.        |
| 2537. | "     | Silvene W. Fitchett.  | 2597.  | "     | Edward J. Murphy.      |
| 2538. | Mate  | Robert Henderson.     | *2598. | "     | Charles Saunders.      |
| 2539. | "     | William Nowell.       | 2599.  | "     | David McCobb.          |
| 2540. | Capt. | Abner T. Crowell.     | 2600.  | "     | Thomas J. Munroe.      |
| 2541. | "     | Henry B. Rollins.     | 2601.  | "     | Thomas Haggett.        |
| 2542. | "     | Joseph L. Swazey.     | 2602.  | "     | Thomas M. Smith.       |
| 2543. | "     | Chas. E. Bayley.      | 2603.  | "     | Joseph B. Baker.       |
| 2544. | "     | Lemuel S. Norwood.    | 2604.  | "     | David G. McCarty.      |

|       |       |                       |       |       |                        |
|-------|-------|-----------------------|-------|-------|------------------------|
| 2605. | Capt. | Domenico Viola.       | 2665. | Capt. | John W. Munson.        |
| 2606. | "     | Joseph E. Hadley.     | 2666. | "     | Chas. B. Dunham.       |
| 2607. | "     | William Gould.        | 2667. | "     | Andrew D. Griffin.     |
| 2608. | "     | Robert W. Smith.      | 2668. | "     | Richard McCulloch.     |
| 2609. | "     | Chas. E. Patten.      | 2669. | "     | Benj. N. Banks.        |
| 2610. | "     | Alfred G. Gray.       | 2670. | "     | Joshua S. Harriman     |
| 2611. | "     | Elijah J. Pinkham.    | 2671. | "     | Wm. A. Kenny.          |
| 2612. | "     | Samuel Pote.          | 2672. | "     | Philetus Foster.       |
| 2613. | "     | George A. Tucker.     | 2673. | "     | Zadoc F. Brewster.     |
| 2614. | "     | Israel Atherton.      | 2674. | Mate  | Philander D. West.     |
| 2615. | "     | John H. Drew.         | 2675. | Capt. | Francis W. Nye.        |
| 2616. | "     | Benj. Winchenbach.    | 2676. | "     | John Conley.           |
| 2617. | "     | James McKenzie.       | 2677. | "     | Wm. E. Hatch.          |
| 2618. | "     | Alfred Brownless.     | 2678. | "     | Isaac G. Lord.         |
| 2619. | "     | Charles H. Maxim.     | 2679. | "     | Christopher S. Crosby. |
| 2620. | "     | Alexander Seger.      | 2680. | "     | Peter Hanson.          |
| 2621. | "     | Alexander G. Barclay. | 2681. | Mate  | John N. Rahbush.       |
| 2622. | "     | Geo. E. Alchorn.      | 2682. | Capt. | Jewett H. Ginn.        |
| 2623. | "     | Abiathar Osborn.      | 2683. | "     | John Dowdall.          |
| 2624. | "     | Wm. C. Anderson.      | 2684. | "     | Edwin W. Clifford.     |
| 2625. | "     | Chas. E. Packer       | 2685. | "     | David F. Henry.        |
| 2626. | "     | Henry Cole.           | 2686. | "     | Richard Ryder.         |
| 2627. | "     | George W. Pendleton.  | 2687. | "     | Alfred D. Pierce.      |
| 2628. | "     | William Coleman.      | 2688. | "     | John E. Lombard.       |
| 2629. | "     | Humphrey B. Knight.   | 2689. | "     | Nahum Gupstill.        |
| 2630. | "     | Adolph Schauenburg.   | 2690. | "     | James D. Phillips.     |
| 2631. | "     | Robert Nohlszen.      | 2691. | "     | William Perry.         |
| 2632. | "     | Joseph H. Morehouse.  | 2692. | "     | John Green.            |
| 2633. | "     | John C. Williams.     | 2693. | "     | Alfred L. Gove.        |
| 2634. | "     | Benj. F. Chapman.     | 2694. | Mate  | Milton Webster.        |
| 2635. | "     | George N. Armstrong.  | 2695. | Capt. | Joseph Brooks.         |
| 2636. | "     | William B. Wood.      | 2696. | "     | Richard P. Bush.       |
| 2637. | "     | Thomas Morgan.        | 2697. | "     | George G. Roberts.     |
| 2638. | "     | Foster B. Brownlow.   | 2698. | "     | Chas. L. Horton.       |
| 2639. | "     | Christian Wendehorst. | 2699. | "     | Theodore Borgfeldt.    |
| 2640. | "     | Diederich Schilling.  | 2700. | "     | Edward Delfosse.       |
| 2641. | "     | John E. Cook.         | 2701. | "     | Joseph Mulligan.       |
| 2642. | "     | James A. Hughes.      | 2702. | "     | Joseph Hunter.         |
| 2643. | "     | Joseph Bursley, Jr.   | 2703. | "     | Frederick W. Grantson. |
| 2644. | "     | Joseph W. Nickerson.  | 2704. | "     | John M. Cann.          |
| 2645. | "     | James Morse.          | 2705. | "     | George Herrick.        |
| 2646. | "     | William Thompson.     | 2706. | "     | Owen Kearney.          |
| 2647. | "     | Chas. P. Morrell.     | 2707. | "     | Daniel A. Baldwin.     |
| 2648. | "     | William M. Patterson. | 2708. | "     | William Kelly, Jr.     |
| 2649. | "     | Carl J. Bischoff.     | 2709. | "     | Fortesque S. Hopkins.  |
| 2650. | Mate  | George H. Colby.      | 2710. | "     | John I. Smith.         |
| 2651. | Capt. | Ernst J. Domansky.    | 2711. | "     | Dexter Vaughan.        |
| 2652. | "     | Henry G. C. Kruse.    | 2712. | "     | Isaac L. Viguers.      |
| 2653. | "     | John H. Jarvis.       | 2713. | "     | Lewis C. Hopkins.      |
| 2654. | "     | Augustus Anderson.    | 2714. | "     | Willard L. Staples.    |
| 2655. | "     | John M. Kendall.      | 2715. | "     | Robert Morchant.       |
| 2656. | "     | Philip Holkins.       | 2716. | "     | George Howe.           |
| 2657. | Mate  | Daniel Fallon.        | 2717. | "     | Joseph King.           |
| 2658. | Capt. | John A. Colson.       | 2718. | "     | Chas. A. Schetky.      |
| 2659. | "     | Thomas Eldridge.      | 2719. | "     | Peter Willerup.        |
| 2660. | "     | James Wall.           | 2720. | "     | George A. D. Mallott.  |
| 2661. | "     | David Hall.           | 2721. | "     | Alfred D. Davis.       |
| 2662. | "     | Thomas Griffiths.     | 2722. | "     | Frederick Lovell.      |
| 2663. | "     | Robert Healey.        | 2723. | Mate  | Alfred E. Pirsson.     |
| 2664. | "     | Thomas Hassell.       | 2724. | Capt. | Cadwallader Hughes     |

## APPENDIX.

|       |       |                       |       |       |                         |
|-------|-------|-----------------------|-------|-------|-------------------------|
| 2725. | Capt. | James H. Parker.      | 2785. | Capt. | Otis Baker, Jr.         |
| 2726. | "     | Chas. W. Seekins.     | 2786. | "     | Timothy N. Porter.      |
| 2727. | "     | Elijah Smith, Jr.     | 2787. | "     | David N. Kelley.        |
| 2728. | "     | Patrick Skinner.      | 2788. | Mate  | Thomas Brewer.          |
| 2729. | Mate  | Frederick H. Grote.   | 2789. | Capt. | Thomas Vorge.           |
| 2730. | Capt. | Alfred L. Theobald.   | 2790. | "     | William Bryant.         |
| 2781. | "     | Elbridge G. Conway.   | 2791. | "     | Edward Green.           |
| 2782. | "     | Edward R. Pietsch.    | 2792. | "     | Charles H. Boucher.     |
| 2783. | "     | Alfred G. Newman.     | 2793. | "     | James McCrary.          |
| 2784. | "     | William Milner.       | 2794. | "     | Herman Deike.           |
| 2785. | "     | Henry Holthusen.      | 2795. | "     | Thomas F. Martin.       |
| 2786. | "     | Dennis J. Mahoney.    | 2796. | "     | Frederick T. Padelford. |
| 2787. | "     | Hudson N. Sherman.    | 2797. | "     | Chas. B. Bailey.        |
| 2788. | "     | Henry W. Sherman.     | 2798. | "     | Robert N. Seeley.       |
| 2789. | "     | William A. Barrett.   | 2799. | "     | William P. Sprague.     |
| 2790. | "     | Moses Smith.          | 2800. | "     | Samuel Cornelius.       |
| 2791. | "     | Warren F. Griffin.    | 2801. | "     | Benjamin Redding.       |
| 2792. | "     | Whitman Holmes.       | 2802. | "     | James Hansen.           |
| 2793. | "     | Thomas Sheridan.      | 2803. | "     | Ellis E. Freethy.       |
| 2794. | "     | Matthew J. Bell.      | 2804. | "     | Franklin J. Latham.     |
| 2795. | "     | Henry C. Brown.       | 2805. | "     | Geo. W. Couch.          |
| 2796. | "     | eter Johnson.         | 2806. | "     | Ira G. Gillman.         |
| 2797. | "     | David Main.           | 2807. | "     | Joshua C. Higgs.        |
| 2798. | "     | William Folker.       | 2808. | "     | Braselius McKenzie.     |
| 2799. | "     | Chas. H. Bode.        | 2809. | "     | James S. Hopkins.       |
| 2800. | "     | John McCormack.       | 2810. | "     | George Lord.            |
| 2791. | "     | James Pennington.     | 2811. | "     | Charles M. Willata.     |
| 2792. | "     | Robt. M. York.        | 2812. | "     | Roderick McDonald.      |
| 2793. | "     | Ingrim B. Slocomb.    | 2813. | "     | George W. Cannon.       |
| 2794. | "     | Lorenz W. Tilebergh.  | 2814. | "     | Alfred M. Goddard.      |
| 2795. | "     | Wm. Shackford.        | 2815. | Mate  | James H. S. Curtis.     |
| 2796. | "     | Lawrence Cony.        | 2816. | Capt. | Frank Watlington.       |
| 2797. | "     | Chas. H. Smith.       | 2817. | "     | Frederick Bernsee.      |
| 2798. | "     | Wm. Thompson.         | 2818. | "     | Caleb J. McKenzie.      |
| 2799. | "     | Samuel A. Gove.       | 2819. | "     | James R. Potter.        |
| 2800. | "     | Harding Porter.       | 2820. | "     | John O. Cox.            |
| 2801. | "     | Samuel Hathorn.       | 2821. | "     | Ichabod G. Frisbee.     |
| 2802. | "     | Thos. W. McDormand.   | 2822. | "     | William H. Payson.      |
| 2803. | "     | Samuel F. Huddleston. | 2823. | "     | John Evers.             |
| 2794. | "     | John Hagen.           | 2824. | "     | Francis A. Drew.        |
| 2795. | "     | Oliver W. Miller.     | 2825. | Mate  | John Williams.          |
| 2796. | "     | Charterer H. Davis.   | 2826. | Capt. | Thomas Lawson.          |
| 2797. | "     | Joseph E. Wood.       | 2827. | "     | Samuel G. Jackson.      |
| 2798. | "     | Alfred F. Gilmore.    | 2828. | "     | John P. Williams.       |
| 2799. | Mate  | Charles F. Dearing.   | 2829. | "     | Jonathan Dow.           |
| 2800. | Capt. | Aaron Cappi.          | 2830. | "     | Geo. B. Hubbard.        |
| 2770. | "     | Josias M. Cobb.       | 2831. | "     | Prince H. Taylor.       |
| 2771. | "     | Freeman Ricker.       | 2832. | "     | Elbridge Keller.        |
| 2772. | "     | Justus L. Stoughton.  | 2833. | "     | William Boyd.           |
| 2773. | "     | Alexander Hanson.     | 2834. | Mate  | George Egan.            |
| 2774. | "     | William C. Cottam.    | 2835. | Capt. | Charles M. Bray.        |
| 2775. | "     | Abraham S. Johnson.   | 2836. | "     | William W. Neff.        |
| 2776. | "     | Louis L. Hazard.      | 2837. | "     | Jesse Mott.             |
| 2777. | "     | Manson Hume.          | 2838. | "     | Chas. P. Thomas.        |
| 2778. | "     | William H. Norton.    | 2839. | "     | John J. Morrow.         |
| 2779. | "     | Rober Strachan.       | 2840. | "     | Chas. Pieters.          |
| 2780. | "     | William D. Pierce.    | 2841. | Mate  | Chas. Tengwall.         |
| 2781. | "     | Smith A. Dayton.      | 2842. | Capt. | Thomas J. Perry.        |
| 2782. | "     | David Palazzo.        | 2843. | "     | Emil Siewerts.          |
| 2783. | "     | Lincoln Coombs.       | 2844. | "     | Thomas May.             |

|             |                       |             |                        |
|-------------|-----------------------|-------------|------------------------|
| 2845. Capt. | William Fortune.      | 2905. Capt. | Chas. H. Davis.        |
| 2846. "     | Thomas Power.         | 2906. "     | Ebenezer Williams.     |
| 2847. "     | Eben J. Locke.        | 2907. "     | Joshua Bramhall.       |
| 2848. "     | Wm. J. Coumans.       | 2908. "     | James D. Pine.         |
| 2849. "     | John Erikson.         | 2909. "     | George Branscombe.     |
| 2850. "     | Ammiel Colman.        | 2910. "     | Geo. McConnell.        |
| 2851. "     | Patrick H. Hickey.    | 2911. "     | Rodolphus H. Weeks.    |
| 2852. "     | Wm. G. Smith.         | 2912. "     | Sheldon Lewis.         |
| 2853. "     | Stephen Carey.        | 2913. "     | Christopher A. Whaley. |
| 2854. "     | William M. Horton.    | 2914. "     | Wm. F. Wilson.         |
| 2855. "     | Auranus M. Miller.    | 2915. "     | Theodore S. P. Brown.  |
| 2856. "     | Charles Miller        | 2916. "     | James W. Johnston.     |
| 2857. "     | George B. Chapman.    | 2917. "     | Samuel H. Rich.        |
| 2858. "     | Isaac R. Freeman.     | 2918. "     | Wm. P. Crowell.        |
| 2859. "     | Ephraim T. Marshall.  | 2919. "     | John B. Harding.       |
| 2860. "     | James M. Tukey.       | 2920. Mate  | Wm. Sturges.           |
| 2861. "     | Robert N. Hand.       | 2921. Capt. | John F. Cables.        |
| 2862. "     | John E. Armstrong.    | 2922. "     | James M. Bond.         |
| 2863. "     | Alexander R. Smith.   | 2923. "     | Robert Kirk.           |
| 2864. "     | Jacques Pateau.       | 2924. "     | Robert H. Masters.     |
| 2865. "     | Peter Peterson.       | 2925. "     | Geo. F. Densmore.      |
| 2866. "     | Thomas McVey          | 2926. "     | Lather Handy           |
| 2867. Mate  | Asa C. Southworth.    | 2927. "     | Wm. Mellen.            |
| 2868. Capt. | Gilbert Smith.        | 2928. "     | Chas. W. Snow.         |
| 2869. "     | Samuel Osborn.        | 2929. "     | Wm. H. Newman.         |
| 2870. "     | William McMurchy.     | 2930. "     | Stephen Paine.         |
| 2871. "     | Jeremiah D. Grace.    | 2931. "     | William T. Julio.      |
| 2872. "     | David Ross.           | 2932. "     | Horace B. Hillman.     |
| 2873. Mate  | William Schultz.      | 2933. "     | James D. Dickson.      |
| 2874. Capt. | Joseph D. McNab.      | 2934. "     | John Wood.             |
| 2875. "     | John P. Pearson.      | 2935. Mate  | Wm. P. Goldie.         |
| 2876. "     | Edward Strum, Jr.     | 2936. Capt. | Daniel B. Roberts.     |
| 2877. "     | Thomas Butler.        | 2937. "     | John H. Bogart.        |
| 2878. "     | Daniel R. Jessup.     | 2938. "     | Richard Leavitt.       |
| 2879. "     | Mattthew Harrison.    | 2939. "     | Chas. E. Stanley.      |
| 2880. "     | James H. King.        | 2940. "     | Wm. H. Wedmore.        |
| 2881. "     | Austin K. Penny.      | 2941. "     | Moses C. Stanly.       |
| 2882. "     | Robert Bell.          | 2942. "     | Geo. S. Locke.         |
| 2883. "     | James Stevenson.      | 2943. "     | Michael Wilson.        |
| 2884. "     | James T. English.     | 2944. "     | Chas. H. Rendell.      |
| 2885. "     | John S. Hatfield.     | 2945. "     | Joshua E. Gamage.      |
| 2886. "     | David L. Long.        | 2946. "     | Wm. E. Trefry          |
| 2887. Mate  | Theodore Julius, Jr.  | 2947. "     | James Sullivan.        |
| 2888. Capt. | Henry Peters.         | 2948. "     | Squire Alexander.      |
| 2889. "     | David P. Berry.       | 2949. "     | Malcolm McLeod.        |
| 2890. "     | Andrew Blatchford.    | 2950. "     | Chas. E. Durkee.       |
| 2891. "     | James A. Leighton.    | 2951. "     | Elias E. Pitts.        |
| 2892. "     | George Hubbard.       | 2952. "     | Jean Formantin.        |
| 2893. "     | John M. Courtenay.    | 2953. "     | Albion K. Buckley.     |
| 2894. "     | George Greenfield.    | 2954. "     | Charles B. Gamage.     |
| 2895. "     | Matthew Wyman.        | 2955. "     | Henry H. Eden.         |
| 2896. "     | Edgar M. Tuthill.     | 2956. "     | Elias B. Curtis.       |
| 2897. Mate  | Amos W. Loomis.       | 2957. "     | John B. Arnold.        |
| 2898. Capt. | Duncan McD. Douglass. | 2958. "     | James C. Dickson.      |
| 2899. "     | Stewart F. Gardner.   | 2959. "     | Joseph Kenney.         |
| 2900. "     | Edgar Scofield.       | 2960. "     | Joseph H. Bird.        |
| 2901. Mate  | Francis Jennet.       | 2961. "     | Robert Fletcher.       |
| 2902. Capt. | John Nelson.          | 2962. "     | Friedrich Jachens.     |
| 2903. "     | Aaron H. Wood.        | 2963. "     | Martin Wenke, Jr.      |
| 2904. Mate  | David J. Starbuck.    | 2964. "     | Victor V. Crook.       |

## APPENDIX.

|        |       |                      |        |       |                        |
|--------|-------|----------------------|--------|-------|------------------------|
| 2965.  | Capt. | Melvin Williams.     | 3025.  | Capt. | John W. Mantle.        |
| 2966.  | "     | William Putnam.      | 3026.  | "     | Frederick N. Hayden.   |
| 2967.  | "     | James Lynch.         | 3027.  | "     | Frank Stevens.         |
| 2968.  | "     | Reuben G. Kenney.    | 3028.  | "     | John E. Wooster.       |
| 2969.  | "     | Joseph Buckman.      | 3029.  | "     | Samuel White.          |
| •2970. | "     | Samuel E. Jarman.    | 3030.  | "     | George F. Hinckley.    |
| 2971.  | "     | Alyah P. Blanchard.  | 3031.  | "     | John M. Eve.           |
| 2972.  | "     | John P. Dix.         | 3032.  | "     | Jens P. Miller.        |
| 2973.  | "     | Sebastiano Galliano. | 3033.  | "     | James R. Crowe.        |
| 2974.  | "     | John S. Kinsley.     | 3034.  | "     | Walter W. Luke.        |
| 2975.  | "     | Isaac J. Acker.      | 3035.  | "     | Peter W. Brown.        |
| 2976.  | "     | Joseph Scholtz.      | 3036.  | "     | Erasthus Chase.        |
| 2977.  | "     | George W. Maxwell.   | 3037.  | "     | James Johnston.        |
| 2978.  | "     | Peter A. Spearwater. | 3038.  | "     | Charles W. Bent.       |
| 2979.  | "     | Samuel S. Freeman.   | 3039.  | "     | Edward Venning.        |
| 2980.  | "     | Rufus H. Allen.      | 3040.  | "     | James L. Girroir.      |
| 2981.  | "     | Reuben Patridge.     | 3041.  | "     | Charles Grosenick.     |
| 2982.  | "     | William E. Woodbury. | 3042.  | "     | Edward Ganion.         |
| 2983.  | "     | Francis B. Rhodes.   | 3043.  | "     | Thomas Davis.          |
| 2984.  | "     | Donald McDougal.     | 3044.  | "     | Shippey Lent.          |
| 2985.  | "     | Aaron B. Cronk.      | 3045.  | "     | John Allen             |
| 2986.  | "     | Henry Moulton.       | 3046.  | "     | Carl H. Beckshoff.     |
| 2987.  | "     | Henry Barton.        | 3047.  | "     | Isaac R. Loughlin.     |
| 2988.  | "     | John J. Allen.       | 3048.  | "     | Thomas C. Forsyth.     |
| 2989.  | "     | James S. Johnson.    | 3049.  | "     | Samuel Genge.          |
| 2990.  | "     | Edward J. Talbot.    | 3050.  | "     | Nicolay L. Jahn.       |
| 2991.  | "     | Samuel Y. Desales.   | 3051.  | "     | Thomas Drisko.         |
| 2992.  | "     | Nelson J. Wood.      | 3052.  | "     | Archibald G. Hamilton. |
| 2993.  | "     | Edward O'Bryan.      | 3053.  | Mate  | John M. Thompson.      |
| 2994.  | "     | Henry K. Norton.     | 3054.  | Capt. | Edward Backhouse.      |
| 2995.  | "     | Dennis Dolen.        | 3055.  | "     | Christian G. Hiorth.   |
| 2996.  | "     | Patrick Hayes.       | 3056.  | "     | Andrew W. Reynolds.    |
| 2997.  | "     | Joseph H. Bray.      | 3057.  | "     | Andrew S. Pendleton.   |
| 2998.  | "     | Seth H. Chester.     | 3058.  | "     | Chas. H. F. Reed.      |
| 2999.  | "     | Matthew Dunn.        | 3059.  | "     | Caleb C. Eyre.         |
| 3000.  | "     | Elijah Gould.        | 3060.  | "     | Sylvester Blakeman.    |
| 3001.  | "     | Thomas R. Bowden.    | 3061.  | "     | Peleg B. Nichols.      |
| 3002.  | "     | William Foley.       | 3062.  | "     | Isaac Preble.          |
| 3003.  | "     | Noyes P. Haskell.    | 3063.  | "     | Henry Meyers.          |
| 3004.  | "     | William W. Lawrence. | 3064.  | "     | Jesse T. Carver.       |
| 3005.  | "     | Edward W. Randall.   | 3065.  | Mate  | William Vickerman.     |
| 3006.  | "     | George H. York.      | 3066.  | Capt. | John H. Chapman.       |
| 3007.  | "     | Samuel G. Davis.     | 3067.  | "     | Samuel Patten.         |
| 3008.  | "     | Jonathan Strong.     | •3068. | "     | William Johnson.       |
| 3009.  | "     | Richard E. Marshman. | 3069.  | "     | Joseph E. Corson.      |
| 3010.  | "     | Thomas Stacy.        | 3070.  | "     | Samuel Laighton.       |
| 3011.  | "     | Robert N. Warner.    | 3071.  | "     | Reginald F. Smith.     |
| 3012.  | "     | George W. Foxwell.   | 3072.  | "     | George Nickerson.      |
| 3013.  | "     | Richard Bullen.      | 3073.  | "     | Charles G. Bunker.     |
| 3014.  | Mate  | Oliver P. Couch.     | 3074.  | "     | Julius Bergman.        |
| 3015.  | Capt. | Robert F. Thomas.    | 3075.  | "     | Patrick H. Ryan.       |
| 3016.  | "     | Donald McLeod.       | 3076.  | "     | George W. Davis.       |
| 3017.  | "     | Harris Coffill.      | 3077.  | "     | George N. Elliot.      |
| 3018.  | "     | Isaiah Hart.         | 3078.  | "     | Thomas R. Hamilton.    |
| 3019.  | "     | Nigel D'Olly.        | 3079.  | "     | Henry L. Black.        |
| •3020. | "     | Thomas Blanch.       | 3080.  | "     | Frederick W. Witham.   |
| 3021.  | "     | Alfred T. Dalrymple. | 3081.  | "     | Thomas Collins.        |
| 3022.  | "     | James Becker.        | •3082. | "     | Minott Ward.           |
| 3023.  | "     | Charles J. Graham.   | 3083.  | "     | Ansel Crosby.          |
| 3024.  | "     | David A. Saunders.   | 3084.  | "     | James P. Miller.       |

|       |       |                           |        |       |                       |
|-------|-------|---------------------------|--------|-------|-----------------------|
| 3065. | Capt. | George H. Marshall.       | 8145.  | Capt. | Richard Tallack.      |
| 3066. | "     | Jesse Leard.              | 8146.  | "     | Joseph D. Small.      |
| 3067. | "     | Frederick Miller.         | 8147.  | "     | Charles Gallacar.     |
| 3068. | "     | Wilhelm L. Stahl.         | 8148.  | "     | Charles B. Rogers.    |
| 3069. | "     | Ansel B. Anderson.        | 82149. | "     | Wm. H. Cunningham.    |
| 3070. | "     | Archibald McLellan.       | 8150.  | "     | David Oestmann.       |
| 3071. | "     | August Eelsenbroek.       | 8151.  | "     | Peter Petersen.       |
| 3072. | "     | Charles R. Null.          | 8152.  | "     | William Russell.      |
| 3073. | "     | Johann G. Claussen.       | 8153.  | "     | James Crowell.        |
| 3074. | "     | Charles R. Miesegaeas.    | 8154.  | "     | John Spalckhaver.     |
| 3075. | "     | Nathan P. Carver.         | 8155.  | "     | James F. Williams.    |
| 3076. | "     | Zemro M. Fickett.         | 8156.  | "     | Patrick Mockler.      |
| 3077. | "     | Charles S. Carmine.       | 8157.  | "     | Thomas Simpson.       |
| 3078. | "     | William Y. Loud.          | 8158.  | "     | Hillern H. Janssen.   |
| 3079. | "     | John Gillis.              | 8159.  | "     | Clans Hustede.        |
| 3100. | "     | Ferdinand D. Herriman.    | 8160.  | "     | Joseph Greenish.      |
| 3101. | "     | Hans Spiesen.             | 8161.  | "     | Alke A. Harken.       |
| 3102. | "     | Jean H. Lobit.            | 8162.  | "     | John M. Ingham.       |
| 3103. | "     | George W. Clark.          | 8163.  | "     | James Higgins.        |
| 3104. | "     | Thomas W. Soule.          | 8164.  | "     | Isaac Beebe.          |
| 3105. | "     | Michael Hapenny.          | 8165.  | "     | Joseph T. Conant.     |
| 3106. | "     | James H. Ashbey.          | 8166.  | Mate  | Christopher O. Hiles. |
| 3107. | "     | John Wright.              | 8167.  | Capt. | Charles H. Brewster.  |
| 3108. | "     | Stillman Small.           | 8168.  | "     | Thomas E. Kimball.    |
| 3109. | "     | Charles Oman.             | 8169.  | "     | Charles Donovan.      |
| 3110. | "     | Lloyd P. Marble.          | 8170.  | "     | Oliver D. Barberie.   |
| 3111. | "     | Jean M. Nicolas.          | 8171.  | "     | Henry McIver.         |
| 3112. | "     | Warren E. Fickett.        | 8172.  | Mate  | George W. Chase.      |
| 3113. | "     | Shephard Blanchard.       | 8173.  | Capt. | Nathaniel Houghton.   |
| 3114. | Mate  | Peter O. Strom.           | 8174.  | "     | James Thomson.        |
| 3175. | Capt. | Abner S. Robinson.        | 8175.  | "     | Joseph Hill.          |
| 3116. | "     | James Reed.               | 8176.  | "     | Benjamin R. Butman.   |
| 3117. | "     | Daniel F. Frisbee.        | 8177.  | "     | Samuel S. Baker.      |
| 3118. | "     | James P. West.            | 8178.  | "     | William Kelley.       |
| 3119. | "     | Joseph Qualey.            | 8179.  | "     | Charles Ralph.        |
| 3120. | "     | John Peterson.            | 8180.  | "     | Turner Carr, Jr.      |
| 3121. | "     | Samuel B. Davis.          | 8181.  | "     | William C. Gibbs.     |
| 3122. | "     | Phineas A. Nickerson.     | 8182.  | "     | John D. McKenzie.     |
| 3123. | "     | Robert A. Millar.         | 8183.  | "     | Robert H. Smith.      |
| 3124. | "     | John Evans.               | 8184.  | "     | Wm. C. Barbrick.      |
| 3125. | "     | Thomas Johnson.           | 8185.  | "     | James O. White.       |
| 3126. | "     | Theodore A. Block.        | 8186.  | "     | Thomas L. Fleming.    |
| 3127. | "     | John J. Giles.            | 8187.  | "     | John D. Mahy.         |
| 3128. | "     | Edwin Lewis.              | 8188.  | "     | Willis Howes.         |
| 3129. | "     | Hugh Cameron.             | 8189.  | "     | Dennis Nugent.        |
| 3130. | Mate  | Christ. D. II. Lindemann. | 8190.  | "     | Clifton H. Havener.   |
| 3131. | Capt. | William T. Kelley.        | 8191.  | "     | David E. Taylor.      |
| 3132. | "     | Christoph J. Pfeffer.     | 8192.  | "     | Charles R. Johnson.   |
| 3133. | "     | Johann H. Carls.          | 8193.  | "     | Elias E. Patterson.   |
| 3134. | "     | Alexander Harriott.       | 8194.  | "     | John Jenkins.         |
| 3135. | Mate  | Cyrus K. Porter.          | 8195.  | "     | William H. Winters.   |
| 3136. | Capt. | Elijah Baxter.            | 8196.  | "     | Ernest Vinet.         |
| 3137. | "     | Joseph F. Brown.          | 8197.  | "     | John Sheehy.          |
| 3138. | "     | John S. Rogers.           | 8198.  | "     | Josiah McLellan.      |
| 3139. | "     | Evander Harriman.         | 8199.  | "     | Herschal Fuller.      |
| 3140. | "     | David H. Hayden.          | 8200.  | "     | Johannes Nielsen.     |
| 3141. | "     | Charles F. Stone.         | 8201.  | "     | William Betaworth.    |
| 3142. | "     | Archibald Patterson.      | 8202.  | "     | Daniel White, Jr.     |
| 3143. | "     | Francois Magnen.          | 8203.  | "     | Edwin Jones.          |
| 3144. | "     | Franklin Shute.           | 8204.  | "     | Alonzo Burrows.       |

|       |       |                       |       |       |                          |
|-------|-------|-----------------------|-------|-------|--------------------------|
| 8205. | Capt. | William H. Gardiner.  | 8265. | Capt. | William Y. Ford.         |
| 8206. | "     | James Mason.          | 8266. | "     | Joseph S. Perry.         |
| 8207. | "     | Frederick S. Ward.    | 8267. | "     | Joseph H. York.          |
| 8208. | "     | Stephen Nickerson.    | 8268. | "     | Moses Chase.             |
| 8209. | "     | John Garmow.          | 8269. | "     | James M. Parker.         |
| 8210. | "     | James Lorway.         | 8270. | "     | William J. Card.         |
| 8211. | "     | Abram Phinney.        | 8271. | "     | James R. Herriman.       |
| 8212. | "     | Thomas D. McLaughlin. | 8272. | "     | Seth M. Campbell.        |
| 8213. | "     | John Gillis.          | 8273. | "     | Joseph W. Wass.          |
| 8214. | "     | Hector McKenzie.      | 8274. | "     | Thomas Carroll.          |
| 8215. | "     | Daniel H. Howes.      | 8275. | "     | Edward Berry.            |
| 8216. | "     | William F. Peck.      | 8276. | "     | James R. Neill.          |
| 8217. | "     | Philander Rouse.      | 8277. | "     | Thomas Young.            |
| 8218. | "     | William E. Whitter.   | 8278. | "     | James E. Harriman.       |
| 8219. | "     | Richard Welsh.        | 8279. | "     | Joshua Poland.           |
| 8220. | Mate  | Selden R. Tucker.     | 8280. | "     | George W. Mariner.       |
| 8221. | Capt. | Seth G. Wyman.        | 8281. | "     | John H. Denker.          |
| 8222. | "     | Abel Martin.          | 8282. | "     | William H. Bayley        |
| 8223. | "     | John W. Russell.      | 8283. | "     | James L. Tooker          |
| 8224. | "     | Samuel B. Hazelton.   | 8284. | "     | Henry Tatterson.         |
| 8225. | "     | Richard Douglass.     | 8285. | "     | Samuel Veneou.           |
| 8226. | "     | Michael V. Almeida.   | 8286. | "     | Renne King.              |
| 8227. | "     | John W. Holmes.       | 8287. | "     | George W. Cochran.       |
| 8228. | "     | Gilman M. Ryder.      | 8288. | "     | Franklin Howes.          |
| 8229. | "     | George Morria.        | 8289. | "     | William Stubbs.          |
| 8230. | Mate  | Jacob E. Luisa.       | 8290. | "     | Eugene J. Farrell.       |
| 8231. | Capt. | James Bartlett.       | 8291. | "     | Joseph C. Witham.        |
| 8232. | "     | Charles O'Bryan.      | 8292. | "     | Edwin Wallace.           |
| 8233. | "     | Joel S. Crowley.      | 8293. | "     | James Soule.             |
| 8234. | "     | Simon Landrey.        | 8294. | "     | Samuel A. Godfrey.       |
| 8235. | "     | James Gerroir.        | 8295. | "     | Charles Miller.          |
| 8236. | "     | James W. Sprague.     | 8296. | "     | Robert R. Searle.        |
| 8237. | "     | Simon Le Blanc.       | 8297. | "     | George W. Ryder.         |
| 8238. | "     | Samuel A. Eldredge.   | 8298. | Mate  | Erick P. Peterson.       |
| 8239. | "     | William H. Card.      | 8299. | Capt. | Heinrich Von Helms.      |
| 8240. | "     | James McCalmont.      | 8300. | "     | John Whitta.             |
| 8241. | "     | Robert Yeamen.        | 8301. | "     | Lester C. Darling.       |
| 8242. | "     | Oliver Gamage.        | 8302. | "     | James W. Candler.        |
| 8243. | "     | Israel McFarland.     | 8303. | "     | Eliasha Nickerson.       |
| 8244. | "     | Henry S. Ackley.      | 8304. | "     | Henry K. Manwaring.      |
| 8245. | "     | James Gordon.         | 8305. | "     | Schuyler A. Cobb.        |
| 8246. | "     | Richard Fletcher.     | 8306. | "     | William Hinton.          |
| 8247. | "     | Jacob Ackles.         | 8307. | "     | George Whittey.          |
| 8248. | "     | John G. O'Brien.      | 8308. | "     | Samuel Borland.          |
| 8249. | Mate  | Ferdinand Schive.     | 8309. | "     | Samuel Hinks.            |
| 8250. | Capt. | John Kane.            | 8310. | "     | John H. Magune.          |
| 8251. | "     | Hiram Pitcher.        | 8311. | "     | Abner C. Stetson.        |
| 8252. | "     | Thomas Labey.         | 8312. | "     | Herbert H. Doane.        |
| 8253. | "     | Edward Davison.       | 8313. | "     | William Waycott.         |
| 8254. | "     | Joseph Brewster.      | 8314. | "     | Chris C. E. Schmiegelow. |
| 8255. | "     | Rufus Ames.           | 8315. | "     | John Campbell.           |
| 8256. | "     | Ira K. Buck.          | 8316. | "     | Thomas Morgan.           |
| 8257. | "     | William Reed.         | 8317. | "     | Angus Steele.            |
| 8258. | "     | Reuben Card.          | 8318. | "     | Henry G. Williams.       |
| 8259. | "     | James Publicover.     | 8319. | "     | Thomas Pritchard, Jr.    |
| 8260. | Mate  | William Clark.        | 8320. | "     | Charles S. Thomson, Jr.  |
| 8261. | Capt. | John W. Sharon.       | 8321. | "     | Ellakim H. Crocker.      |
| 8262. | "     | Charles F. Nichols.   | 8322. | "     | Mortimer S. Porter.      |
| 8263. | "     | Francis Smith.        | 8323. | Mate  | David J. Wood.           |
| 8264. | "     | Jean G. Bourdet.      | 8324. | Capt. | John Killam.             |

|             |                       |             |                       |
|-------------|-----------------------|-------------|-----------------------|
| 3325. Mate  | Wm. T. Hemsworth.     | 3385. Capt. | James H. Lambert.     |
| 3326. "     | William Gibson.       | 3386. "     | Robert H. Ramsey.     |
| 3327. Capt. | Patrick Shelly.       | 3387. "     | Freeman W. Hinks.     |
| 3328. "     | Joseph W. Sawyer.     | 3388. "     | George A. Coombs.     |
| 3329. "     | George W. Mudgett.    | 3389. "     | John Gunn.            |
| 3330. "     | Lloyd Stemmer.        | 3390. "     | William Carney.       |
| 3331. "     | Augustus Crawford.    | 3391. "     | Johnson A. Elderkin.  |
| 3332. Mate  | Lars Ryerson.         | 3392. "     | Axel F. Matern.       |
| 3333. Capt. | Bartley Ansell.       | 3393. "     | Jeremiah B. Gregory.  |
| 3334. "     | Andrew Lind.          | 3394. "     | John Crease.          |
| 3335. "     | Lorenzo B. Latham.    | 3395. "     | Robert Gunn.          |
| 3336. "     | John Brown.           | 3396. "     | Charles P. Huff.      |
| 3337. "     | Archibald Macdonald.  | 3397. Mate  | Sands M. Lane.        |
| 3338. "     | Phineas Windsor.      | 3398. Capt. | Francis Morris.       |
| 3339. "     | Robert D. Phillips.   | 3399. "     | Theophilus Chase.     |
| 3340. "     | George Thompson.      | 3400. "     | Luther A. Buck.       |
| 3341. "     | James F. Cox.         | 3401. "     | Ira Hurst.            |
| 3342. "     | Andrew Bain.          | 3402. "     | Ezra Kelley.          |
| 3343. "     | John Lockhart.        | 3403. "     | Samuel J. Brookman.   |
| 3344. "     | Alexander Findlay.    | 3404. "     | David H. Thornton.    |
| 3345. "     | James A. Thompson.    | 3405. "     | Herman O. Store.      |
| 3346. "     | George Hubbard.       | 3406. "     | Daniel P. Upton.      |
| 3347. "     | William F. O'Leary.   | 3407. "     | John G. Witham.       |
| 3348. "     | William T. Mitchell.  | 3408. "     | Andrew W. Barclay.    |
| 3349. "     | Christian Hachtmann.  | 3409. "     | Daniel C. Child.      |
| 3350. "     | Friedrich Miesegades. | 3410. Mate  | George B. Loring.     |
| 3351. "     | William Foster.       | 3411. "     | Charles A. Covert.    |
| 3352. "     | William A. Tooker.    | 3412. Capt. | Pearl R. Durkee.      |
| 3353. "     | David Nairn.          | 3413. "     | Francis T. Lind.      |
| 3354. "     | Norman H. Bent.       | 3414. "     | Cyrus A. Brewer.      |
| 3355. "     | William T. Leland.    | 3415. "     | Thomas Haley          |
| 3356. "     | Lathrop Ford.         | 3416. "     | Peter Petersen.       |
| 3357. "     | Richard E. McLean.    | 3417. "     | Isaac Hopkins.        |
| 3358. "     | Gurdon Gates.         | 3418. "     | Joshua Hopkins.       |
| 3359. "     | Richard S. Culver.    | 3419. "     | John T. Norton.       |
| 3360. Mate  | James Irving.         | 3420. "     | Charles Seeley.       |
| 3361. Capt. | Joseph F. Burton.     | 3421. "     | Charles C. Staples.   |
| 3362. "     | Gilbert Lincoln.      | 3422. "     | Washington Willets.   |
| 3363. "     | Joseph McAlmon.       | 3423. "     | Thomas Acker.         |
| 3364. "     | Elihu H. Cheney.      | 3424. "     | Levi C. Jordan.       |
| 3365. Mate  | William Peterson.     | 3425. "     | Cornelius Dissosway.  |
| 3366. Capt. | James Henderson.      | 3426. "     | Henry Lawrence.       |
| 3367. "     | Francis Sprague.      | 3427. "     | Joseph G. Pearson.    |
| 3368. "     | Charles P. Marshman.  | 3428. "     | George B. Murray.     |
| 3369. "     | William H. McKenzie.  | 3429. "     | Horatio N. Barberie.  |
| 3370. Mate  | Charles D. Duncan.    | 3430. "     | John H. C. de Haan.   |
| 3371. "     | Frederick C. Duncan.  | 3431. "     | Rufus P. Treffry.     |
| 3372. Capt. | Johann Kuck.          | 3432. "     | Jes. M. Lauridsen.    |
| 3373. "     | Mason Damon.          | 3433. "     | William S. Doe.       |
| 3374. "     | Frederick L. Bonhoff. | 3434. "     | Stephen A. Gardner.   |
| 3375. "     | Theodore G. Peabody.  | 3435. "     | Simeon H. Goold.      |
| 3376. "     | Albert C. Fowler.     | 3436. "     | Winthrop R. McManna.  |
| 3377. "     | Harrison Godfrey.     | 3437. "     | Frederick Brandt.     |
| 3378. "     | Charles A. Rebours.   | 3438. "     | George T. Howitt.     |
| 3379. "     | Frederick Williamson. | 3439. "     | Enoch Chase.          |
| 3380. "     | Charles C. Comstock.  | 3440. "     | Benjamin F. White.    |
| 3381. "     | David N. Berry.       | 3441. "     | Francis L. Church.    |
| 3382. "     | Stephen C. Sprague.   | 3442. "     | Alexander Lloyd.      |
| 3383. "     | Francis H. West.      | 3443. "     | William Murray.       |
| 3384. "     | Lewis E. Pearce.      | 3444. "     | Nathaniel J. Kinsman. |

|       |       |                       |       |       |                       |
|-------|-------|-----------------------|-------|-------|-----------------------|
| 3445. | Capt. | James Crawford.       | 3505. | Capt. | Ephraim J. Stimpson.  |
| 3446. | "     | Murdock McRae.        | 3506. | "     | Charles C. Dunbar.    |
| 3447. | "     | Joseph Thorndike.     | 3507. | "     | Ira W. Harriman.      |
| 3448. | "     | Ludwig Schmitt.       | 3508. | "     | George Johnson.       |
| 3449. | "     | Henry O. Winsor.      | 3509. | "     | Jonathan Clifford.    |
| 3450. | "     | Johann Lanstedt.      | 3510. | "     | Jason L. Pendleton.   |
| 3451. | "     | William Benson.       | 3511. | "     | Robert Killman.       |
| 3452. | "     | Ildo K. Harwood.      | 3512. | "     | Isaiah W. Gill.       |
| 3453. | "     | William McCreary.     | 3513. | "     | John R. Saunders.     |
| 3454. | "     | Lemuel N. Pray.       | 3514. | "     | Samuel D. Billinge.   |
| 3455. | "     | Robert Johnson.       | 3515. | "     | William C. Edwards.   |
| 3456. | "     | James S. Horsley.     | 3516. | "     | George O. Balchen.    |
| 3457. | "     | George Breckwoldt.    | 3517. | "     | Joseph B. Nichols.    |
| 3458. | "     | Orin V. Hardling.     | 3518. | "     | John E. Hartery.      |
| 3459. | "     | Benjamin F. Clark.    | 3519. | "     | Joseph F. Mayo.       |
| 3460. | "     | Benjamin F. Robinson. | 3520. | "     | John Gardes.          |
| 3461. | "     | Lewis Denon.          | 3521. | "     | Thomas Moffat.        |
| 3462. | "     | John N. Parker.       | 3522. | "     | Robert K. Davison.    |
| 3463. | Mate  | Thomas G. Beauchamp.  | 3523. | "     | Frank Logan.          |
| 3464. | Capt. | Samuel Johnson.       | 3524. | "     | Charles T. Best.      |
| 3465. | "     | Lewis Higgins, Jr.    | 3525. | "     | Henry P. Creighton.   |
| 3466. | "     | Edward Small.         | 3526. | "     | William M. Reed.      |
| 3467. | "     | John J. Roberts.      | 3527. | "     | James Rice.           |
| 3468. | "     | William S. Dawson.    | 3528. | "     | Alexander Nixon.      |
| 3469. | "     | Ebenezer Wyse.        | 3529. | "     | Josiah F. Hitchborn.  |
| 3470. | "     | Israel T. Wade.       | 3530. | "     | James H. Burdick.     |
| 3471. | "     | Richard B. Beard.     | 3531. | "     | Lyman Wiswell.        |
| 3472. | "     | William Larkin.       | 3532. | "     | Frank Boudier.        |
| 3473. | "     | Friedrich Freese.     | 3533. | "     | John S. Blake.        |
| 3474. | "     | Amos S. Godfrey.      | 3534. | "     | Thomas R. Fisher.     |
| 3475. | "     | Merritt S. Woodhull.  | 3535. | "     | Herman A. Buttner.    |
| 3476. | "     | John C. Phillips.     | 3536. | "     | Grenville P. Clapp.   |
| 3476. | "     | James Small.          | 3537. | "     | Charles T. Julius.    |
| 3478. | "     | John Thomas.          | 3538. | "     | John W. Covert.       |
| 3479. | "     | Daniel A. Wenke.      | 3539. | "     | John Toothaker.       |
| 3480. | Mate  | Henry J. F. W. Kamps. | 3540. | "     | John E. Davidson.     |
| 3481. | Capt. | Perrin C. Drisko.     | 3541. | "     | Ernst Stechmann.      |
| 3482. | "     | Thomas White.         | 3542. | "     | Oliver Strickland.    |
| 3483. | "     | Benjamin S. Hallock.  | 3543. | "     | Heinrich Strenbeck.   |
| 3484. | "     | Gustavus Kellin.      | 3544. | "     | George L. Crowell.    |
| 3485. | "     | Olney F. Scott.       | 3545. | "     | Stephen Gorham.       |
| 3486. | "     | Abel C. King.         | 3546. | "     | Charles Leese.        |
| 3487. | "     | Everell F. Rowe.      | 3547. | "     | Heinrich A. Ficke.    |
| 3488. | "     | Wentworth B. Kenny.   | 3548. | Mate  | Charles Nellman.      |
| 3489. | "     | Francis H. Leonard.   | 3549. | Capt. | Albert R. Doane.      |
| 3490. | "     | Felix Forest.         | 3550. | "     | James Thompson.       |
| 3491. | "     | Franklin M. Knight.   | 3551. | Mate  | Thomas V. Fetherston. |
| 3492. | "     | Gilbert Shaw.         | 3552. | Capt. | Joseph Davison.       |
| 3493. | "     | August W. Neuman.     | 3553. | "     | Daniel J. Ayer.       |
| 3494. | "     | Charles Kinsman.      | 3554. | "     | Watson Hooper.        |
| 3495. | "     | John Cassidy.         | 3555. | "     | John P. Reed.         |
| 3496. | "     | Emile Bentegeat.      | 3556. | "     | Albert Draper.        |
| 3497. | "     | Isaac Clarke.         | 3557. | "     | Hans P. Peterson.     |
| 3498. | "     | Heman H. Nickerson.   | 3558. | "     | Charles Sawyer, Jr.   |
| 3499. | "     | Daniel O. Davis.      | 3559. | "     | Manley C. Lawton.     |
| 3500. | "     | Niels A. Nielsen.     | 3560. | "     | Daniel Koefoed.       |
| 3501. | "     | Ludwig Soyland.       | 3561. | "     | John G. Murchie.      |
| 3502. | "     | Samuel J. Smith.      | 3562. | "     | John Blair.           |
| 3503. | "     | Ebenezer J. Sawyer.   | 3563. | "     | Charles A. Plummer.   |
| 3504. | "     | Francis W. Huntley.   | 3564. | "     | Henry S. Quick.       |

APPENDIX.

|       |                        |       |       |                        |
|-------|------------------------|-------|-------|------------------------|
| Capt. | Stayley B. Dane.       | 3625. | Capt. | Samuel O. Crowell.     |
| "     | William Hutchings.     | 3626. | "     | Thomas B. Huntington.  |
| "     | George E. Teague.      | 3627. | "     | John Johnson.          |
| "     | William D. Wainwright. | 3628. | "     | Oliver Burger.         |
| "     | John J. Horton.        | 3629. | "     | Francis H. Kelley.     |
| "     | William S. Gibson.     | 3630. | "     | Gilson Bedell.         |
| "     | Richard N. Spates.     | 3631. | "     | William Bulmer.        |
| "     | Johann Winters.        | 3632. | "     | John Bartabu.          |
| "     | John C. Bartlett.      | 3633. | "     | Augustine Grindal.     |
| "     | Charles A. Willson.    | 3634. | "     | Perez Martin.          |
| "     | Thomas Robinson.       | 3635. | "     | Walker W. Seaman.      |
| "     | Hinrich Lankauau.      | 3636. | "     | William A. Pendleton.  |
| "     | Carl Luders.           | 3637. | "     | James H. Saunders.     |
| "     | Frederick S. Wallace.  | 3638. | "     | John G. Punch.         |
| "     | Presbury N. Luce.      | 3639. | "     | Joseph Swain.          |
| "     | Charles H. Post.       | 3640. | "     | James A. McRean.       |
| "     | Charles P. Seymour.    | 3641. | "     | John L. Rudolf.        |
| "     | James Veacock.         | 3642. | "     | James S. Downey.       |
| "     | Walter Collins.        | 3643. | "     | John M. Snow.          |
| "     | William T. Irving.     | 3644. | "     | Paul Lassen.           |
| "     | John Smith.            | 3645. | "     | Charles Hamfield.      |
| "     | John G. Farrell.       | 3646. | "     | Samuel W. Crawford.    |
| Mate  | Martin Vallaster       | 3647. | "     | William Chisholm.      |
| Capt  | Alfred W. Smith.       | 3648. | "     | William J. Powers.     |
| "     | John H. Welsh.         | 3649. | "     | Fred. Sheere.          |
| "     | Edmond Mathews.        | 3650. | "     | James Gandin.          |
| "     | Nathaniel Sy vester.   | 3651. | "     | Kendal Holmes.         |
| "     | Julius Broberg.        | 3652. | "     | John J. Luce.          |
| "     | Samuel Web.            | 3653. | "     | George T. Cowen.       |
| "     | George Westerdyke.     | 3654. | "     | William Ackery.        |
| "     | Augustus H. Lucas.     | 3655. | "     | Salem A. Furman.       |
| "     | Pete J. Macdonald.     | 3656. | "     | Amos E. Hallcock.      |
| "     | Frederick I. Weed.     | 3657. | "     | William N. Raynor.     |
| "     | Charles H. Salter.     | 3658. | "     | Augusto Grassau.       |
| "     | Addison B. Grindle.    | 3659. | "     | Rogers G. Patten.      |
| "     | Edwin Lyne.            | 3660. | "     | Alexander C. Ray.      |
| "     | Benjamin G. Barbour.   | 3661. | "     | Henry J. Howes.        |
| "     | Sven Larsson.          | 3662. | "     | Charles Parker.        |
| "     | Weston Wade.           | 3663. | "     | Daniel Barcellos.      |
| "     | Josiah F. Ryder.       | 3664. | "     | Ansel Weeks, Jr.       |
| "     | Noel B. Davis.         | 3665. | "     | Dennis F. Tracy.       |
| "     | James P. Risk.         | 3666. | "     | Robert M. Marks.       |
| "     | Charles Crouchen.      | 3667. | "     | Charles Loring.        |
| "     | Daniel Andrews.        | 3668. | "     | Charles E. Shillaber.  |
| "     | Isaac B. Gage.         | 3669. | "     | Henry Hiichs.          |
| "     | James H. Hollis.       | 3670. | "     | Asa Read.              |
| "     | Henry M. Walker.       | 3671. | "     | Abraham R. Swaim.      |
| "     | William McKay.         | 3672. | "     | Brunswick Holloway.    |
| "     | Brooks Cousins.        | 3673. | Mate  | Thomas F. Bonington.   |
| "     | Clement M. Hammond.    | 3674. | "     | Peter J. C. Antonisen. |
| "     | Josiah B. Hutchings.   | 3675. | Capt. | William Wynter.        |
| "     | James Bolitho.         | 3676. | "     | Samuel R. Goodwin.     |
| "     | Edward F. Byrne.       | 3677. | Mate  | William D. Murray.     |
| "     | Samuel Pine.           | 3678. | Capt. | John Morton.           |
| "     | Jesse S. Howell.       | 3679. | "     | Henry L. Hall.         |
| "     | Major Mills.           | 3680. | "     | James Turner.          |
| "     | George Cumming.        | 3681. | "     | William Regan.         |
| "     | Samuel L. Lord.        | 3682. | "     | Edwin Fuller.          |
| "     | John V. Hickman.       | 3683. | "     | William H. Thompson.   |
| Mate  | John Augur.            | 3684. | "     | Daniel Friele,         |

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|---------------------------------|--------------------------------------|
| 3685. Capt. James Perry.        | 8745. Capt. Jones W. Look.           |
| 3686. " Albert D. Rogers.       | 8746. " Charles S. Williams.         |
| 3687. " Robert B. Strout.       | 8747. " William G. Morris.           |
| 3688. " John E. Boyle.          | 8748. " Erasmus Fish.                |
| 3689. " Thomas V. Gardner.      | 8749. " Prescott P. Johnson.         |
| 3690. " Benjamin F. Hoyt.       | 8750. " Horace P. Clarke.            |
| 3691. " Horace Perkins.         | 8751. " William Lyons.               |
| 3692. " John Littlewood.        | 8752. " Hans T. Peterson.            |
| 3693. " Joseph Mountfort.       | 8753. " Levi Howes.                  |
| 3694. " Gustavus Schneidau.     | 8754. " Frederick A. Merrill.        |
| 3695. " William F. McCrery.     | 8755. Mate Frederick H. Fischer.     |
| 3696. " John Jacobs.            | 8756. Capt. Edgar Orr.               |
| 3697. " Samuel Parritt.         | 8757. " James M. Flynn.              |
| 3698. " James B. Wilson.        | 8758. " Richard H. Gilliat.          |
| 3699. " Benjamin Thompson.      | 8759. " Franklin Nichols.            |
| 3700. " John E. Achorn.         | 8760. " Charles Feven.               |
| 3701. " Charles Bahn.           | 8761. " James L. Brown.              |
| 3702. " Charles A. Trask.       | 8762. " Dennis F. Scovill.           |
| 3703. " Nathaniel Gamage.       | 8763. " Willis T. Ayres.             |
| 3704. " Kenneth McKenzie.       | 8764. " William C. Lewis.            |
| 3705. " Henry Allen.            | 8765. " Benjamin H. Wills.           |
| 3706. " Charles Dixon.          | 8766. " John Cummins.                |
| 3707. " William Williams.       | 8767. " Roswell L. Stanwood.         |
| 3708. " Alexander R. Rettie.    | 8768. " Frederic A. Clark.           |
| 3709. " Samuel Sanford.         | 8769. " Amos A. Lanpher.             |
| 3710. " Freeman Coffill.        | 8770. " Harlan P. Prince.            |
| 3711. " Benjamin Nason.         | 8771. " John H. Verdon.              |
| 3712. " William B. Godfrey.     | 8772. " Josiah P. Luce.              |
| 3713. " David M. Crowley.       | 8773. " Thomas Boomer.               |
| 3714. " Seth Taylor, Jr.        | 8774. " Thomas C. Harding.           |
| 3715. " Charles W. Shaw.        | 8775. " Henry J. Robinson.           |
| 3716. " Nathan A. Bachelder.    | 8776. " Henry Spencer.               |
| 3717. " Erasmus Button.         | 8777. " James Walker.                |
| 3718. " Adolphe A. Steigertahl. | 8778. " Thomas P. Post.              |
| 3719. " James I. Maxwell.       | 8779. " John Locke, Jr.              |
| 3720. " Jonathan Bradshaw.      | 8780. " James S. Allen.              |
| 3721. " Nathan S. Davis.        | 8781. " Gilbert Williams.            |
| 3722. " George M. Peeling.      | 8782. Mate Alexander M. Moald.       |
| 3723. " Charles H. Upton.       | 8783. Capt. Joachim H. C. Segelbach. |
| 3724. " Charles Hanson.         | 8784. " Edward Van Sice.             |
| 3725. " John Vautier.           | 8785. " Alexander Winsor.            |
| 3726. " James E. Woodhull.      | 8786. " Richard Taylor.              |
| 3727. " Aaron D. Field.         | 8787. " John T. Fyler.               |
| 3728. " Albert F. Gerry.        | 8788. " Thomas B. Rogers.            |
| 3729. " Bernard O'Neil.         | 8789. Mate Lauritz J. Pedersen.      |
| 3730. " William W. Cathcart.    | 8790. Capt. Enoch N. Howard.         |
| 3731. " Bernhard Arnstaedt.     | 8791. " Robert Kalloch.              |
| 3732. " Josiah W. Paul.         | 8792. " George E. Brooks.            |
| 3733. " Henry Hanson.           | 8793. " Edwin V. Gager.              |
| 3734. " Jacob Kluth.            | 8794. " John D. Robertson.           |
| 3735. " Benjamin Tuso.          | 8795. " George S. Wilson.            |
| 3736. " Dunbar H. Norton.       | 8796. " James Paterson.              |
| 3737. " William L. Breaker.     | 8797. " George Dick.                 |
| 3738. " Samuel B. Miller.       | 8798. " Thomas B. Witherspoon.       |
| 3739. " George A. Bickford.     | 8799. " Thomas H. Byrnes.            |
| 3740. " John Rogers.            | 8800. " James W. Gunby.              |
| 3741. " Jacob Westberg.         | 8801. " James McLean.                |
| 3742. " John Hill.              | 8802. " James Holmes.                |
| 3743. " Waterman Clift.         | 8803. " George L. Roberts.           |
| 3744. Mate John A. Syperrik.    | 8804. Mate August Sebelin.           |

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|-------|-------|-------------------------|-------|-------|----------------------|
| 3805. | Capt. | Lathan C. Wardell.      | 3865. | Capt. | Michael W. Crowell.  |
| 3806. | "     | George W. Nickels.      | 3866. | "     | John G. Carmichael.  |
| 3807. | "     | Samuel O. Flitner.      | 3867. | "     | John C. Pike.        |
| 3808. | "     | Peter S. Moore.         | 3868. | "     | Elias Florio.        |
| 3809. | Mate  | Christian Johnson.      | 3869. | "     | Fredrick Johnson.    |
| 3810. | Capt. | William Ross.           | 3870. | "     | Clarence B. Hayward. |
| 3811. | "     | Andrew Munroe.          | 3871. | "     | James Hill.          |
| 3812. | "     | Pierre M. L. De Villard | 3872. | "     | John Anderson.       |
| 3813. | "     | Josiah E. Miller.       | 3873. | "     | John Coalfeet.       |
| 3814. | "     | Charles A. Russell.     | 3874. | "     | John F. Gregory.     |
| 3815. | "     | Jacob Bent.             | 3875. | "     | Arthur M. Johnson.   |
| 3816. | "     | Benjamin B. Knowlton.   | 3876. | "     | Edward Strum.        |
| 3817. | "     | Thomas McGuire.         | 3877. | "     | William H. Forbes.   |
| 3818. | "     | Claus Pieper.           | 3878. | "     | James L. Chase.      |
| 3819. | "     | Anton S. Hanson.        | 3879. | "     | Benjamin Doane.      |
| 3820. | "     | Gilman C. Parker.       | 3880. | "     | Henry R. Purtridge.  |
| 3821. | Mate  | Maurice M. Gorman.      | 3881. | "     | George Robinson.     |
| 3822. | Capt. | George Buck, Jr.        | 3882. | "     | Theodore G. Clark.   |
| 3823. | "     | Henry Osborne.          | 3883. | "     | Samuel Yeaton.       |
| 3824. | "     | Harrison P. Snow.       | 3884. | "     | Charles A. Cann.     |
| 3825. | "     | Johannes Meinschien.    | 3885. | "     | Wm. J. O'Brien.      |
| 3826. | "     | Andrew Milliken.        | 3886. | "     | James H. Little.     |
| 3827. | "     | Samuel E. Messenger.    | 3887. | "     | Thomas McStoker.     |
| 3828. | "     | James Guyer.            | 3888. | "     | George E. Lord.      |
| 3829. | "     | Edward S. Hardy.        | 3889. | "     | Harvey M. Merrymen.  |
| 3830. | "     | Silas S. Gardiner.      | 3890. | "     | Andrew J. Small.     |
| 3831. | "     | Carl L. Halb.           | 3891. | "     | Edwin A. Robinson.   |
| 3832. | "     | Samuel M. Lindsey.      | 3892. | "     | Minard Wood.         |
| 3833. | "     | Thomas Davison.         | 3893. | "     | Samuel G. Graff.     |
| 3834. | "     | Charles A. French.      | 3894. | "     | Samuel F. Wulff.     |
| 3835. | "     | Charles M. Davis.       | 3895. | "     | George W. Gates.     |
| 3836. | "     | William A. Kempton.     | 3896. | "     | Simeon R. Cottrell.  |
| 3837. | "     | Daniel P. Walters.      | 3897. | "     | Benjamin Nickerson.  |
| 3838. | "     | James L. Milla.         | 3898. | "     | Jonathan B. Marsh.   |
| 3839. | "     | William Remond.         | 3899. | "     | George Anderson.     |
| 3840. | "     | Charles M. Lerway.      | 3900. | "     | Rodman Pratt.        |
| 3841. | "     | George B. Kitchin.      | 3901. | "     | Frederick A. Torrey. |
| 3842. | "     | Jeremiah Mudgett.       | 3902. | "     | Henry C. Daggett.    |
| 3843. | "     | John C. Hubbard, Jr.    | 3903. | "     | William E. Purney.   |
| 3844. | "     | William O. Hayden.      | 3904. | "     | Elisha S. Towse.     |
| 3845. | "     | Benjamin F. Rice.       | 3905. | "     | John R. Potter.      |
| 3846. | "     | James S. Dwight.        | 3906. | "     | Ira K. Chichester.   |
| 3847. | "     | Jetur F. Terry.         | 3907. | "     | Neil Fraser.         |
| 3848. | "     | Edward M. Jones.        | 3908. | "     | Rufus Acker.         |
| 3849. | "     | Stephen W. Rawding.     | 3909. | "     | James C. Stowell.    |
| 3850. | "     | Ralph M. Collins.       | 3910. | "     | Martin L. Rogers.    |
| 3851. | "     | Mo-ea H. Fisk.          | 3911. | Mate  | John L. Newman.      |
| 3852. | "     | Rawson J. Post.         | 3912. | Capt. | Richard Prendergast. |
| 3853. | "     | John Mackie.            | 3913. | "     | Henry A. Irvine.     |
| 3854. | "     | Kimbill Ryder.          | 3914. | "     | Rufus P. Bowdoin.    |
| 3855. | "     | Gustaf Barnt.           | 3915. | "     | George F. Carpenter. |
| 3856. | "     | Joseph T. Webb.         | 3916. | "     | Jonathan F. Cowen.   |
| 3857. | "     | Charles Huxford.        | 3917. | "     | Gaius Anderson.      |
| 3858. | "     | Judah C. Smith.         | 3918. | "     | Charles Dowell.      |
| 3859. | "     | David Ireland.          | 3919. | "     | William H. Kennedy.  |
| 3860. | "     | Henry Raymers.          | 3920. | "     | John W. Stevens.     |
| 3861. | "     | Augustus G. Cary.       | 3921. | "     | Henry N. West.       |
| 3862. | "     | Lorenzo Iruqueta.       | 3922. | "     | John W. Smith.       |
| 3863. | "     | Johann Peters.          | 3923. | "     | James Cole.          |
| 3864. | "     | James A. Fraser.        | 3924. | "     | Isaac H. Ellingwood. |

8925. Capt. John W. Hunter.  
 8926. " Lauchlin McLean.  
 8927. " Mark Murphy.  
 8928. Mate Charles F. Schultz.  
 8929. Capt. Hans H. J. F. Timm.  
 8930. " Frerich H. Lolling.  
 8931. " Henry Richmond.  
 8932. " Peter J. Anderson.  
 8933. " John B. Brown.  
 8934. " William Redding.  
 8935. " Nicolaus W. Bradhering.  
 8936. " Heman B. Rider.  
 8937. " Robert B. Deal.  
 8938. 2d Mate John P. Geer.  
 8939. Mate William C. Warland.  
 8940. Capt. John Warren.  
 8941. " David May.  
 8942. " Cyrus Reed.  
 8943. Mate Charles S. Henschel.  
 8944. Capt. Hen y J. Gillespie.  
 8945. Mate Julius Flint.  
 8946. Capt. James H. McCrillis.  
 8947. " William T. Gillespie.  
 8948. " Isaac Spencer.  
 8949. " James W. Penney.  
 8950. " Angus R. Martin.  
 8951. " Hugh McKay.  
 8952. " James Forrestall.  
 8953. " John Anderson.  
 8954. " Ira G. McLellan.  
 8955. " Ethiel Swett.  
 8956. " George T. Gordon.  
 8957. " Frank W. Brown.  
 8958. " Newell Graham.  
 8959. " James George.  
 8960. " Erastus H. Booth.  
 8961. " Nathan Swain.  
 8962. " Gregory Burke.  
 8963. " William Clow.  
 8964. " Anthony Fish.  
 8965. " Alexander McDougall.  
 8966. " Joseph Michon.  
 8967. " James F. M. Derickson.  
 8968. " Adolph L. Feydt.  
 8969. " Eleazer Hathaway.  
 8970. " Joseph B. Walker.  
 8971. " Thomas B. Hill.  
 8972. " John B. Fowler.  
 8973. " Roderick McRae.  
 8974. " Stephen Knowlton.  
 8975. " Nicodemus L. Collegoi.  
 8976. Mate Horace C. Mayo.  
 8977. Capt. Rufus Patterson.  
 8978. " Joseph Packard.  
 8979. " Austin H. Wood.  
 8980. " John F. Behrens.  
 8981. " William M. Somerville.  
 8982. " Frederick Williams.  
 8983. " Joseph S. Hopkins.  
 8984. " Samuel E. Foote.  
 8985. Capt. Henry Gray.  
 8986. " John F. MacLennan.  
 8987. " William Buckles.  
 8988. " William Gordon.  
 8989. " Charles E. Bichelder.  
 8990. " James H. Salter.  
 8991. " George W. Wixon.  
 8992. " William Hopewell.  
 8993. " Oliver E. Benson.  
 8994. " William H. Hewson.  
 8995. " Nathaniel Vesey.  
 8996. " George W. Bunker.  
 8997. " John McLeod.  
 8998. " William A. Dunham.  
 8999. " William Williams.  
 4000. " Thomas J. Carroll.  
 4001. " Hiram O. Benton.  
 4002. " George T. Harkness.  
 4003. " James Crane.  
 4004. " John Moreton.  
 4005. " James F. Smith.  
 4006. " Wm. A. Overton, Jr.  
 4007. Mate Jacob J. Hinrichsen.  
 4008. Capt. Joseph J. Timelli.  
 4009. " Robert W. Dosey.  
 4010. Mate Charles M. Ljunggren.  
 4011. Cap. Albert S. Tibbets.  
 4012. " Benjamin M. Tripp.  
 4013. " John W. Moore.  
 4014. " Elazer S. Giles.  
 4015. " William Davison.  
 4016. Mate Charles E. Wendle.  
 4017. Capt. Delancy G. Trefry.  
 4018. " Matthew Stubbs.  
 4019. " Lycurgus P. Gilkey.  
 4020. " Daniel C. McIntosh.  
 4021. " William W. Gourley.  
 4022. " Nahum G. Rosebrook.  
 4023. " Danie Merriam.  
 4024. " Walter H. Garfield.  
 4025. " David Scott.  
 4026. " James W. Brown.  
 4027. " Henry Cross.  
 4028. " Alexander B. Gray.  
 4029. " Henry M. Card.  
 4030. " Francis E. Jordan.  
 4031. " Charles Collins.  
 4032. " William McDongall.  
 4033. 2d Mate Frederick Hansen.  
 4034. Capt. William A. Seaman.  
 4035. " Isaac H. Smith.  
 4036. " James F. Miller.  
 4037. " Burton G. Angus.  
 4038. " Elbert F. Bishop.  
 4039. " George Strickland.  
 4040. " Luther J. Briggs.  
 4041. " Charles C. Lange.  
 4042. " Thomas D. Fletcher.  
 4043. " George G. Jameson.  
 4044. " George Gray.

|    |                            |       |                               |
|----|----------------------------|-------|-------------------------------|
| 5. | Capt. Joseph H. Tuthill.   | 4105. | Capt. Horatio N. Parish.      |
| 6. | " Charles A. Pierson.      | 4106. | " George B. Lockhart.         |
| 7. | " William Jones.           | 4107. | " Thomas L. Trecartin.        |
| 8. | " William H. Stevens.      | 4108. | " Lyman F. Richardson.        |
| 9. | " John Stuart.             | 4109. | " Howard Van Norden.          |
| 0. | " Gardiner G. Tibbets.     | 4110. | " Levi Lamb.                  |
| 1. | " Joshua F. Grozier.       | 4111. | " James Affleck.              |
| 2. | " Harland E. Plummer.      | 4112. | " Andrew Smith.               |
| 3. | Mate Jorgen P. Dethlessen. | 4113. | " Horace Walker.              |
| 4. | Capt. John H. Weeks.       | 4114. | " James M. Campbell.          |
| 5. | " William B. Smith.        | 4115. | " Samie Thompson.             |
| 6. | " Lendal Harding.          | 4116. | Mate Henry Heron.             |
| 7. | " Charles Burgess.         | 4117. | Capt. Alfred Nickerson.       |
| 8. | " Andrew Charles.          | 4118. | " Jeremiah Crowley.           |
| 9. | " Reuben S. Collins.       | 4119. | " Philippe De La Perrelle.    |
| 0. | " Henry L. Rabbitt.        | 4120. | " Talisman de F Vasconcellos. |
| 1. | " Darus M. White.          | 4121. | " Jacob B. Crocker.           |
| 2. | " Angier H. Merriman.      | 4122. | " Simeon L. Tracy.            |
| 3. | " Archibald Ewing.         | 4123. | " James W. Chase.             |
| 4. | " Theodore H. Munson.      | 4124. | Mate Samuel Nelson.           |
| 5. | " Daniel B. Eddy.          | 4125. | Capt. Elisha Card.            |
| 6. | " Robert C. Adams.         | 4126. | " George L. White.            |
| 7. | " George V. Morton.        | 4127. | " Bucknam Cole.               |
| 8. | " James H. Avery.          | 4128. | " Andrew Jamieson.            |
| 9. | " Ulric I. F. Borrebridge. | 4129. | " Spiro V. Pennis.            |
| 0. | " Frederick S. Doggett.    | 4130. | " Vincent Morillo.            |
| 1. | " Edward Brickenstein.     | 4131. | " Joseph A. Crummer.          |
| 2. | " Angus Macdonald.         | 4132. | " James W. Dobbin.            |
| 3. | " Paul Dyer.               | 4133. | " William McCubbin.           |
| 4. | " William Smith.           | 4134. | " Martin Stone.               |
| 5. | " Peter J. J. Jensen.      | 4135. | " Charles E. Bishop.          |
| 6. | " Samuel R. Keece.         | 4136. | " Judson C. Steel.            |
| 7. | " Thomas Ryan.             | 4137. | " Guilford Norton.            |
| 8. | " Augustus Ferdinand.      | 4138. | " James P. Sayles.            |
| 9. | " Nehemiah G. Wilson.      | 4139. | " Edward Hooks.               |
| 0. | " James A. Joyner.         | 4140. | " John McDonald.              |
| 1. | " Hugh P. Thomas.          | 4141. | " William L. Shaw.            |
| 2. | " James N. Claghorn.       | 4142. | " George E. Thomas.           |
| 3. | " Richard Norton.          | 4143. | " Herbert H. Leland.          |
| 4. | " James F. Smith.          | 4144. | " Charles Mundy.              |
| 5. | " Alfred R. Burkee.        | 4145. | " Charles E. Bunker.          |
| 6. | " Abraham S. Cartt.        | 4146. | " Charles H. Seaman.          |
| 7. | " Washington W. Hardy.     | 4147. | " Peter C. Duncan.            |
| 8. | " William J. Crowell.      | 4148. | " John Loud.                  |
| 9. | " Dan D. Carlton.          | 4149. | " Lewis West.                 |
| 0. | " Garrison Crowell.        | 4150. | " Edward Neve.                |
| 1. | " Revordy Ghiselin.        | 4151. | " Samuel O. Yates.            |
| 2. | " William Grandison.       | 4152. | " Alexander L. Coutta.        |
| 3. | " Rufus Outhouse.          | 4153. | " John Wakeley.               |
| 4. | " Benjamin McCulloch.      | 4154. | " Robert T. Ingham.           |
| 5. | " Simon H. Carle.          | 4155. | " Christian F. Johnson.       |
| 6. | " Jeremy Stull.            | 4156. | " Jerome Eaton.               |
| 7. | " Charles Butterhouse.     | 4157. | " Levin W. Ballard.           |
| 8. | " George Tapley.           | 4158. | " James Ferguson.             |
| 9. | " Richin Scott.            | 4159. | " Noyes W. Johnson.           |
| 0. | " John H. Parker.          | 4160. | " William Lynch.              |
| 1. | " James H. Shaw.           | 4161. | " George F. A. Avery.         |
| 2. | " Johann F. Schwabeck.     | 4162. | " Alfred Drew.                |
| 3. | " George Lampert.          | 4163. | " Charles Barnard.            |
| 4. | " William C. Berry.        | 4164. | " Thomas Stead.               |

|             |   |                         |             |                    |                      |
|-------------|---|-------------------------|-------------|--------------------|----------------------|
| 4165.       | " | Thomas W. Farnsworth.   | 4225.       | "                  | Francis C. Tuthill.  |
| 4166.       | " | Albert S. Chase.        | 4226.       | "                  | Stephen Siteman.     |
| 4167.       | " | Jarvis Wood.            | 4227.       | "                  | Charles Call, 2d.    |
| 4168.       | " | George Mitchell.        | 4228.       | "                  | James P. Powell.     |
| 4169.       | " | Keyes H. Richards.      | 4229.       | "                  | Benjamin Goss.       |
| 4170.       | " | William H. Croscup.     | 4230.       | "                  | John A. E. Lindt.    |
| 4171.       | " | Robert B. Ely.          | 4231.       | "                  | Chas. E. Wear.       |
| 4172.       | " | John H. Hout.           | 4232.       | "                  | Giuseppe Rosiano.    |
| 4173.       | " | George R. Handy.        | 4233. Mate  | Nils Swanson.      |                      |
| 4174.       | " | John Head.              | 4234. Capt. | John J. Moule.     |                      |
| 4175.       | " | Joseph L. Dickenson.    | 4235.       | "                  | John Gough.          |
| 4176.       | " | Bedford Boultnhouse.    | 4236.       | "                  | Philip E. Bowers.    |
| 4177.       | " | Abijah M. Munson.       | 4237.       | "                  | Robert S. McIntosh.  |
| 4178.       | " | Lucius Grindell.        | 4238.       | "                  | George T. Bolman.    |
| 4179.       | " | Samuel W. Baxter.       | 4239.       | "                  | William H. West.     |
| 4180.       | " | Benjamin A. Williams.   | 4240.       | "                  | Andrew C. Smith.     |
| 4181.       | " | David Hoffses.          | 4241.       | "                  | Uriah Owen.          |
| 4182.       | " | Peter G. Robinson.      | 4242.       | "                  | Caleb J. Atkins.     |
| 4183.       | " | Alfred F. De Joye.      | 4243.       | "                  | George Gerrard.      |
| 4184.       | " | Theodoric Lee.          | 4244.       | "                  | Oren S. Perkins.     |
| 4185.       | " | Christopher E. Dixon.   | 4245.       | "                  | Isaah K. Eldredge.   |
| 4186.       | " | Michael J. Kelly.       | 4246.       | "                  | John Blitz.          |
| 4187.       | " | John Cobb.              | 4247.       | "                  | Martin Niemeyer.     |
| 4188.       | " | Noah D. Rose.           | 4248.       | "                  | Frank Mahony.        |
| 4189.       | " | Albert J. Melchert.     | 4249.       | "                  | John Martin.         |
| 4190.       | " | John W. Cowen.          | 4250.       | "                  | William Jameson.     |
| 4191.       | " | James R. Bulford.       | 4251.       | "                  | William Gott.        |
| 4192.       | " | John Waterhouse.        | 4252.       | "                  | James Parker.        |
| 4193.       | " | William Sadler.         | 4253.       | "                  | Henry Burnham.       |
| 4194.       | " | Charles H. Jacobs.      | 4254.       | "                  | John Jordan.         |
| 4195.       | " | Joseph Johnson.         | 4255.       | "                  | Benjamin W. Conant.  |
| 4196.       | " | Thomas Smith.           | 4256.       | "                  | Thomas Lewis.        |
| 4197.       | " | Thaddeus P. Kent.       | 4257.       | "                  | Eric Gabrielson.     |
| 4198.       | " | William H. Baker.       | 4258. Mate  | George Richardson. |                      |
| 4199.       | " | Albert W. Lavender, 2d. | 4259. Capt. | Edward Sampson.    |                      |
| 4200.       | " | James E. Hunt.          | 4260.       | "                  | Marshall W. Allen.   |
| 4201.       | " | David S. Taylor.        | 4261.       | "                  | Charles H. Prior.    |
| 4202.       | " | George T. Taylor.       | 4262.       | "                  | Joseph H. Hammond.   |
| 4203.       | " | Samuel F. Snow.         | 4263.       | "                  | Andrew Hart.         |
| 4204.       | " | William McDonald.       | 4264.       | "                  | Francis Stevens.     |
| 4205.       | " | George A. Atwell.       | 4265.       | "                  | William A. Webb.     |
| 4206.       | " | Nehemiah Megray.        | 4266.       | "                  | William P. Randall.  |
| 4207.       | " | Harvey Cann.            | 4267.       | "                  | Marcus Hall.         |
| 4208.       | " | James W. Dean.          | 4268.       | "                  | Edward Sharp.        |
| 4209. Mate  |   | Frithjof Fossum.        | 4269.       | "                  | Horace Atwood.       |
| 4210. Capt. |   | William C. Paddock.     | 4270.       | "                  | Lucius C. Robinson.  |
| 4211.       | " | Henry Keane.            | 4271.       | "                  | Alexander F. West.   |
| 4212.       | " | Bartolomew Lavaggi.     | 4272.       | "                  | Edward Nelson.       |
| 4213.       | " | Thomas Settle.          | 4273.       | "                  | John Foster.         |
| 4214.       | " | John Wallace.           | 4274.       | "                  | J. Henry Askers.     |
| 4215.       | " | Eben C. Wentworth.      | 4275.       | "                  | George V. Cussey.    |
| 4216.       | " | George W. Cunningham.   | 4276.       | "                  | Jefferson Hathorn.   |
| 4217.       | " | John Collins.           | 4277.       | "                  | John Skinner.        |
| 4218.       | " | Edward Cavendy.         | 4278.       | "                  | Isaac Crowell.       |
| 4219.       | " | William H. Harrison.    | 4279.       | "                  | William Pfiefer.     |
| 4220.       | " | David W. Blankinship.   | 4280.       | "                  | Edward C. Cousins.   |
| 4221.       | " | Albert Williams.        | 4281.       | "                  | Warrington D. Roath. |
| 4222.       | " | Frank M. Strout.        | 4282.       | "                  | Francisco Mallol.    |
| 4223.       | " | Robert K. Clarke.       | 4283.       | "                  | Henry D. Burdett.    |
| 4224.       | " | Pierre H. Dumont.       | 4284.       | "                  | Francisco Martorell. |

|          |                        |                          |             |                        |
|----------|------------------------|--------------------------|-------------|------------------------|
| 5.       | "                      | Arthur W. Giles.         | 4343. Capt. | Andrew Heron.          |
| 6.       | "                      | Edward Taylor.           | 4344.       | William S. Newell.     |
| 7.       | "                      | Christ'n P. Hildebrandt. | 4345.       | William Watson.        |
| 8.       | "                      | Francis W. Towne.        | 4346.       | Samuel H. Holbrook.    |
| 9.       | "                      | Ozias P. Rector.         | 4347.       | James B. Bartlett.     |
| 0.       | "                      | Philip L. Cosgrove.      | 4348.       | John C. Cunningham.    |
| 1. Mate  | John W. Stuart.        |                          | 4349.       | Miner B. Crowell.      |
| 2. Capt. | Francisco de P. Lluch. |                          | 4350.       | William M. Baker.      |
| 3.       | "                      | Soren J. Petersen.       | 4351.       | Fredrick T. King.      |
| 4.       | "                      | Henry H. Meyer.          | 4352.       | Matthew R. Doane.      |
| 5.       | "                      | William King.            | 4353.       | Harrison Mahoney.      |
| 6.       | "                      | George L. Norton.        | 4354.       | Horace S. Young.       |
| 7.       | "                      | Nelson Faulkner.         | 4355.       | Thomas A. Cairns.      |
| 8.       | "                      | Oliver P. Trask.         | 4356.       | Robert D. Blaisdell.   |
| 9.       | "                      | John Colley              | 4357.       | Robert Marsh.          |
| 0.       | "                      | Robert Wallace.          | 4358.       | Prince S. Borden.      |
| 1.       | "                      | Thomas R. Warren.        | 4359.       | John F. Sawyer.        |
| 2.       | "                      | Lewis B. Hodges.         | 4360.       | Charles H. Sprague.    |
| 3.       | "                      | Charles W. M. Luce.      | 4361.       | Tilley W. Spearwater.  |
| 4.       | "                      | Edward P. Dennis.        | 4362.       | John Thomas.           |
| 5.       | "                      | William Goodall.         | 4363.       | John H. Smith.         |
| 6.       | "                      | William H. Thompson.     | 4364.       | Neil Curry.            |
| 7.       | "                      | John B. Edwards.         | 4365.       | Robert Duncan.         |
| 8.       | "                      | James W. Taylor.         | 4366.       | David W. Hirst.        |
| 9.       | "                      | John J. Scopesan.        | 4367.       | William H. Bickmore.   |
| 0.       | "                      | Leonard S. Lombard.      | 4368.       | Thomas A. Bain.        |
| 1.       | "                      | William Graham.          | 4369.       | Peleg Curtis.          |
| 2.       | "                      | John E. Peck.            | 4370.       | Francis Watlington.    |
| 3.       | "                      | Reuben W. Reed.          | 4371.       | Elias D. Bruner.       |
| 4.       | "                      | Leonard Y. Stanley.      | 4372.       | Joseph Ware.           |
| 5.       | "                      | William W. Cox.          | 4373.       | George A. Lewis.       |
| 6.       | "                      | James C. Bartling.       | 4374.       | Enail A. F. Paech.     |
| 7.       | "                      | Leeman Trefry.           | 4375.       | Joseph H. Rex.         |
| 8.       | "                      | Atkins Hughes.           | 4376.       | Prichard E. Post.      |
| 9.       | "                      | Joseph C. Morrison.      | 4377.       | Samuel C. Lennan.      |
| 0.       | "                      | John A. Johnstone.       | 4378.       | Arthur E. Knight.      |
| 1.       | "                      | Frank H. Bibles.         | 4379.       | Jeremiah W. Smith.     |
| 2. Mate  | George. P. Lawton.     |                          | 4380.       | John E. Rockwell.      |
| 3. Capt. | Frederick M. Hathaway. |                          | 4381.       | George H. Keen.        |
| 4.       | "                      | George Payson.           | 4382.       | John W. Fisher.        |
| 5. Mate  | George H. Goodmanson.  |                          | 4383.       | John H. Bennett.       |
| 6. Capt. | John Wilson.           |                          | 4384.       | Paul A. Dithleosen.    |
| 7.       | "                      | Michael Criscuolo.       | 4385.       | William C. De Hart.    |
| 8.       | "                      | Joseph W. Simpson.       | 4386.       | James N. Layton.       |
| 9.       | "                      | Wesley Foster.           | 4387.       | William P. Worwell.    |
| 0.       | "                      | George W. Barter.        | 4388.       | Benjamin F. Ricketson. |
| 1. Mate  | John W. Burland.       |                          | 4389.       | John W. Godfrey.       |
| 2. Capt. | John A. Chisholm.      |                          | 4390.       | George Pierce.         |
| 3.       | "                      | George F. Williams.      | 4391.       | John H. Black.         |
| 4.       | "                      | Thomas W. Jones.         | 4392. Mate  | John A. A. Ward.       |
| 5.       | "                      | Edward B. Russell.       | 4393. Capt. | Michael McCulloch.     |
| 6.       | "                      | George Lamb.             | 4394.       | William Eves.          |
| 7.       | "                      | William Ottewell.        | 4395.       | James M. Small.        |
| 8.       | "                      | Cesare De Negri.         | 4396.       | George C. Israel.      |
| 9.       | "                      | William B. Eaton.        | 4397.       | Moses M. Welch.        |
| 0.       | "                      | John P. Shourds.         | 4398.       | Joseph W. Munroe.      |
| 1.       | "                      | Charles Potter.          | 4399.       | Augustus W. Sampson.   |
| 2. Mate  | William B. Barker.     |                          | 4400.       | Erik Brown.            |

## COPY OF CHARTER.

Chapter 445, Laws of 1862.

**AN ACT TO INCORPORATE THE "AMERICAN SHIPMASTERS' ASSOCIATION."**

(Passed, April 22, 1862.)

*The People of the State of New York, represented in Senate and Assembly, do enact as follows:*

SEC. 1. JOHN D. JONES, ELISHA E. MORGAN, CHARLES H. MARSHALL, ROBERT L. TAYLOR, EZRA NYE, WILLIAM C. THOMPSON, MOSES H. GRINNELL, LEOPOLD BIERWIRTH, ELLWOOD WALTER, DANIEL DRAKE SMITH, THEODORE B. SATTERTHWAITE, FRANCIS S. LATHROP, RICHARD LATHERS, ALFRED EDWARDS, BENJAMIN C. MORRIS, G. HENRY KOOF, WILLIAM H. H. MOORE, ISAAC H. UPTON, and such other persons as they, or a majority, may associate with them, are hereby constituted a body corporate, by the name of the "AMERICAN SHIPMASTERS' ASSOCIATION," for the purpose of collecting and disseminating information upon subjects of marine or commercial interest, of encouraging and advancing worthy and well-qualified commanders and other officers of vessels in the merchant service, of ascertaining and certifying the qualifications of such persons as shall apply to be recommended as such commanders or officers, and of promoting the security of life and property on the seas.

§ 2. The said Corporation shall have the power to make and adopt a constitution and by-laws, rules and regulations, for the purposes, objects and government thereof, for the admission and regulation of members, for the regulation and payment of fees and dues, and for the management of its funds and property, and from time to time to alter, modify or repeal such constitution, by-laws, rules and regulations.

§ 3. The said Corporation may purchase and possess any real estate, not yielding an income exceeding five thousand dollars per annum, and may apply its funds and property, from time to time, in bestowing premiums or medals for praiseworthy acts in the merchant service, and in premiums or donations for charitable and other pur-

poses, and in such other ways as shall seem conducive to the purposes aforesaid.

§ 4. The business, property and affairs of said Corporation shall be under the general control and management of a Board of Managers, and the said Corporation shall, in and by their said constitution, prescribe the power and duties of such Board of Managers, and of such other officers as may be deemed necessary, and the rules and regulations for the selection, succession and action of such Board of Managers and other officers. The persons named in the first section of this act shall be the first Board of Managers, and shall continue in office until others are so selected in their stead, respectively.

§ 5. The said Corporation may prescribe terms and regulations, upon which persons, not members thereof, may participate in the benefits of said Corporation.

§ 6. The said Corporation shall possess the general powers, and be subject to the general restrictions and liabilities prescribed in the third title of the eighteenth chapter of the first part of the Revised Statutes.

§ 7. Its principal office shall be in the City of New York, but it may establish agencies, and connect itself with similar associations elsewhere.

§. 8. The Legislature may at any time alter or repeal this law.

STATE OF NEW YORK,  
OFFICE OF THE SECRETARY OF STATE. }

I have compared the preceding with the original law on file in this office, and do hereby certify that the same is a correct transcript therefrom, and of the whole of said original law.

Given under my hand and seal of office, at the city of  
[SEAL.] Albany, this first day of May, in the year one thousand  
eight hundred and sixty-two.

J. WESLEY SMITH,

*Deputy Secretary of State.*



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With much respect,

Your obedient servant,

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Accept my thanks for Mr. Dixon's Law of Shipping. On the perusal which I have been able to make of it, the topics seem to be very plainly stated, as well as correctly. They embrace a wide range of information of the greatest interest to all connected with maritime commerce, and the book cannot fail of being very useful, especially to Ship-masters, in their absence from home and from the shores to whom they would otherwise resort.

I am, truly yours,

DANIEL LORD.

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**FROM GENERAL JOHN S. TYLER.**

*Average Adjuster, Boston.*

*Boston, 28th May, 1859.*

Dear Sir :

In the name of the nautical community I return to you an expression of gratitude for the service you have rendered to the public. You have a happy faculty of methodizing and arranging in a form for every day use, the aggregated wisdom of the past and present age. The treatise of Lord Borden, is the only work extant professing to give a synopsis of the Law of Shipping. It has been, as you know, republished here, with notes by Story, and revised again by Perkins; but, the last of these republications and revisions has been to leave the text encumbered by notes and intermixed with nice distinctions, annotations and qualifications, from which the lay reader will hardly deduce a practical conclusion as to what the rule of law is on many points. Your work seems to me eminently calculated to relieve the unlearned reader from perplexity; and it will serve the profession as a digest, and in that character alone save them much labor.

Respectfully,

Your ob'di Servant,

JOHN S. TYLER.

WILL B. DIXON, Esq.

**TESTIMONIALS.**

**FROM THE HON. WILLIAM F. GILES.**

*Judge of the District Court of the United States of the.....District of Maryland.  
Baltimore, June 13th, 1850.*

Dear Sir :

I have given a brief examination to your new work, "The Law of Shipping," but brief as this review has been, I have seen enough to convince me of the practical character of your work, and of the advantage and clearness of the plan you have chosen to impart information on the subjects which you discuss. Your Synopsis of the Revenue Laws, the Laws of General Average, and the Law of Marine Insurance, will render your work of great value to the mercantile community, while its varied information, and the numerous authorities you cite in support of your text, will shorten the labors of the profession in the examination of questions arising under the maritime law. To the Courts of Admiralty, the practising lawyers in our commercial communities, and to every merchant and ship-master your work will be found of much value.

I am, very truly yours,

**WILLIAM F. GILES.**

FRANCIS B. DIXON, Esq.

**FROM JOHN THOMPSON MASON.**

*Collector of the Port of Baltimore, and late Judge of the Court of Errors.*

*Baltimore, June 13th, 1850.*

Dear Sir :

I have examined, not very thoroughly, however, your new work on the Law of Shipping, and have been very much gratified therewith. As far as I have been able to test its accuracy, I can discover no errors in the principles announced. The treatise seems to cover the whole law to which it professes to relate, and its general arrangement is admirable and complete. As far as my judgment may be worth anything, I can safely commend the work to the legal profession.

I am, very respectfully,

Your obedient servant,

**JNO. THOMPSON MASON.**

FRANCIS B. DIXON, Esq.

**NOTICES OF THE PRESS.**

**BOSTON TRAVELLER.**

"It is impossible to speak in terms too high, of the excellence of this work. The affluence of knowledge it exhibits, the lucidity of its arrangement, and the precision of its statements, all unite to render it necessary to the large, important and intelligent classes of men for whom it has been especially prepared. We cordially commend the volume to all who have an interest in the subject, as one in every sense deserving of attention."

**BOSTON POST.**

"We have taken particular pains to examine the merits of this work, and we unhesitatingly pronounce it the best treatise on the subject, that has ever passed under our notice. To the business man it is of incalculable benefit. It supplies a want which has been felt and acknowledged by business men in all parts of the country. This work should be in every counting-house."

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"This work, just issued, needs only to have its existence become known among merchants and ship-masters to insure for it a place among the indispensable books used by them. Its contents will enable the merchant, ship-owner and ship-master to have a right understanding of their legal liabilities in relation to ship, cargo, freight, seamen, passengers, &c ; and, besides other subjects, embraces the principles and practice of insurance in matters growing out of marine disasters. Such a work has long been needed. We take pleasure in commanding it to the attention of all interested in the matters of which it treats, and we believe it will be welcomed by commercial men with signal favor, as it deserves."

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merchant may consult the pages of the 'Merchants' and Ship-masters' Guide' with ad-nd much trouble as well as litigation will be saved, if this volume be put on board every vessel. In all cases of emergency a master of a vessel will be able to find out his best action, and greatly promote the interest of his owners as well as his own.

#### SOUTHERN ARGUS.

mmercial interest of this country is under lasting obligations to Mr. Dixon for the val-ibution he has made to the department of maritime law. The learned author has but an imperative demand in furnishing a manual of the law meeting all the requirements mmercial community upon which the prosperity of our nation so largely depends. Those ortunate enough to meet with this work, will deem it an indispensable fixture to the room and state room. It must rank high among the standard legal works of our

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